Supreme Court, U.S.
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No. 02-281

In the Supreme Court of the United States

INYO COUNTY, A PUBLIC ENTITY; PHIL MCDOWELL, INDIVIDUALLY AND AS DISTRICT ATTORNEY; DAN LUCAS, INDIVIDUALLY AND AS SHERIFF,
Petitioners,

v.

PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY; AND BISHOP PAIUTE GAMING CORPORATION,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 19, 2002
PETITION FOR CERTIORARI GRANTED DECEMBER 2, 2002

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Court of Appeals - Original Opinion, filed January 4, 2002 [The full text of this item is located in the Petition Appendix at pages 9a-43a. Rule 26.1] 142

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The following opinions, decisions, judgments and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the Petition for Writ of Certiorari:

1. Court of Appeals - Original Opinion, filed January 4, 2002 . . . . . Pet. App. 9a-43a

2. Court of Appeals - Order Amending Opinion and Denying Petition for Rehearing En Banc, filed May 20, 2002 . . . . . Pet. App. 1a-8a

RELEVANT DOCKET ENTRIES

CIVIL DOCKET FOR CASE #: 00-CV-6153

1	8/4/00	COMPLAINT for declaratory relief; injunctive relief;
4	9/6/00	MOTION to dismiss for failure to state a claim upon which relief can be granted by defendant Inyo County, defendant Phillip McDowell, Daniel Lucas motion TO BE HEARD by Senior Judge Robert E. Coyle ; Motion Hearing Set For 10/30/00 at 1:30 (sr) [Entry date 09/07/00]
12	11/22/00	ORDER by Senior Judge Coyle ORDERING motion to dismiss for failure to state a claim upon which relief can be granted by dfts [4] GRANTED CASE DISMISSED dfts' motion to dismiss granted (cc: all counsel) (hm) [Entry date 11/27/00]
13	11/27/00	JUDGMENT by Senior Judge Coyle; IT IS HEREBY ORDERED AND ADJUDGED that JUDGMENT IS ENTERED for dfts and against plas re motion to dismiss by dfts [4] GRANTED case TERMINATED (cc: all counsel) (hm) [Entry date 11/27/00]
15	12/22/00	NOTICE OF APPEAL by plaintiffs Bishop Paiute Tribe and Bishop Paiute Gaming from District Court decision re

judgment [13-2], re order [12-2] (fee status paid) (ls) [Entry date 12/26/00]

USCA9 Docket Sheet for 01-15007

1/3/01 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. Setting schedule as follows: CADS is past due; CADS must be filed no later than for Ralph R. LePera; appellant's designation of RT is due 1/2/01, ; appellee's designation of RT is due 1/11/01,, ; appellant shall order transcript by 1/22/01, ; court reporter shall file transcript in DC by 2/21/01, ; certificate of record shall be filed by 2/28/01 ; appellant's opening brief is due 4/9/01, ; appellees' brief is due 5/9/01,, ; appellants' reply brief is due 5/23/01. [01-15007] (gar)

10/9/01 ARGUED AND SUBMITTED TO Harry PREGERSON, Johnnie B. RAWLINSON, Charles R. Weiner [01-15007] (pi)

1/4/02 FILED OPINION: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Unsigned, Published. Harry

PREGERSON, author; Johnnie B. RAWLINSON; Charles R. Weiner.) FILED AND ENTERED JUDGMENT. [01-15007] (kkw)

1/16/02 Filed motion and deputy clerk order: (Deputy Clerk: kkw) The mtn of aples for extension of time to file petition for rehearing and hearing en banc is granted. The due date is extended to 1/25/02. (Motion recvd 1/16/02) [01-15007] (kkw)

1/25/02 [4348173] Filed original and 50 copies Appellees petition for rehearing with suggestion for rehearing en 20 p.pages, served on 1/24/02 PANEL AND ACTIVE JUDGES [01-15007] (kkw)

5/20/02 Filed order (Harry PREGERSON, Johnnie B. RAWLINSON, Charles R. Weiner,):, The opinion filed 1/4/02 is amended (see TEXT)...The petition for rehearing and the suggestion for rehearing en banc are denied. [01-15007] (kkw)

TRIBAL-STATE COMPACT
BETWEEN THE STATE OF CALIFORNIA
AND THE BISHOP PAIUTE TRIBE

Executed December 9, 1999
by Governor Davis of California

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TRIBAL-STATE GAMING COMPACT
Between the BISHOP PAIUTE TRIBE,
a federally recognized Indian Tribe,
and the
STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the Bishop Paiute Tribe AKA Paiute-Shosone Indians of the Bishop Community of the Bishop Conony, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

A. In 1988, Congress enacted IGRA as the federal statute governing Indian gaming in the United States. The purposes of IGRA are to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

B. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

C. The Tribe is currently operating a tribal gaming casino offering Class III gaming activities on its land. On September 1, 1999, the largest number of Gaming Devices operated by the Tribe was 273.

D. The State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical fact that Indian gaming has become the single largest revenue-producing activity for Indian tribes in the United States; out of a desire to terminate pending "bad faith" litigation between the Tribe and the State; to initiate a new era of tribal-state cooperation in areas of mutual concern; out of a respect for the sentiment of the voters of California who, in approving Proposition 5, expressed their belief that the forms of gaming authorized herein should be allowed; and in anticipation of voter approval of SCA 11 as passed by the California legislature.

E. The exclusive rights that Indian tribes in California, including the Tribe, will enjoy under this Compact create a unique opportunity for the Tribe to operate its Gaming Facility in an economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique environment is of great economic value to the Tribe and the fact that income from Gaming Devices represents a substantial portion of the tribes' gaming revenues. In consideration for the exclusive rights enjoyed by the tribes, and in further consideration for the State's willingness to enter into this Compact, the tribes have agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

F. The State has a legitimate interest in promoting the purposes of IGRA for all federally-recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. The Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

Section 1.0. PURPOSES AND OBJECTIVES.

The terms of this Gaming Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-

government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating Class III gaming, and only Class III gaming, on the Tribe's Indian lands to ensure its fair and honest operation in accordance with IGRA, and through that regulated Class III gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming.

Sec. 2.0. DEFINITIONS.

Sec. 2.1. "Applicant" means an individual or entity that applies for a Tribal license or State certification.

Sec. 2.2. "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each

from the state Division of Gambling Control and the state Gambling Control Commission.

Sec. 2.3. "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 2.4. "Gaming Activities" means the Class III gaming activities authorized under this Gaming Compact.

Sec. 2.5. "Gaming Compact" or "Compact" means this compact.

Sec.2.6."Gaming Device" means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Sec. 2.7. "Gaming Employee" means any person who (a) operates, maintains, repairs, assists in any Class III gaming activity, or is in any way responsible for supervising such gaming activities or persons who conduct, operate, account for, or supervise any such gaming activity, (b) is in

a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Sec. 2.8. "Gaming Facility" or "Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) therein.

Sec. 2.9. "Gaming Operation" means the business enterprise that offers and operates Class III Gaming Activities, whether exclusively or otherwise.

Sec. 2.10. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

Sec. 2.11. "Gaming Resources" means any goods or services provided or used in connection with Class III Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class

III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services. "Gaming Resources" does not include professional accounting and legal services.

Sec. 2.12. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier as described by of Section 6.4.5, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gambling Operation.

Sec. 2.13. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) any amendments thereto, and all regulations promulgated thereunder.

Sec. 2.14. "Management Contractor" means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Sec. 2.15. "Net Win" means "net win" as defined by American Institute of Certified Public Accountants.

Sec. 2.16. "NIGC" means the National Indian Gaming Commission.

Sec. 2.17. "State" means the State of California or an authorized official or agency thereof.

Sec. 2.18. "State Gaming Agency" means the entities authorized to investigate, approve, and regulate gaming licenses pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

Sec. 2.19. "Tribal Chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe.

Sec. 2.20. "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal Gaming Agency.

Sec. 2.21. "Tribe" means the Bishop Paiute Tribe, a federally-recognized Indian tribe, or an authorized official or agency thereof.

Sec. 3.0 CLASS III GAMING AUTHORIZED AND PERMITTED. The Tribe is hereby authorized and permitted to engage in only the Class III Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

Sec. 4.0. SCOPE OF CLASS III GAMING.

Sec. 4.1. Authorized and Permitted Class III gaming. The Tribe is hereby authorized and permitted to operate the following Gaming Activities under the terms and conditions set forth in this Gaming Compact:

(a) The operation of Gaming Devices.

(b) Any banking or percentage card game.

(c) The operation of any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.

(e) Nothing herein shall be construed to preclude negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

Sec. 4.2. Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

Sec. 4.3. Authorized number of Gaming Devices

Sec. 4.3.1 The Tribe may operate no more Gaming Devices than the larger of the following:

(a) A number of terminals equal to the number of Gaming Devices operated by the Tribe on September 1, 1999; or

(b) Three hundred fifty (350) Gaming Devices.

Sec. 4.3.2. Revenue Sharing with Non-Gaming Tribes.

(a) For the purposes of this Section 4.3.2 and Section 5.0, the following definitions apply:

(i) A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all

material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe.

(ii) The Revenue Sharing Trust Fund is a fund created by the Legislature and administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies paid pursuant to this Section 4.3.2.

(iii) The Special Distribution Fund is a fund created by the Legislature for the receipt, deposit, and distribution of monies paid pursuant to Section 5.0.

Sec. 4.3.2.1. Revenue Sharing Trust Fund.

(a) The Tribe agrees with all other Compact Tribes that are parties to compacts having this Section 4.3.2, that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay $1.1 million per year to each Non-Compact Tribe, any available monies in that Fund shall be distributed to Non-Compact Tribes in equal shares. Monies in excess of the amount necessary to $1.1 million to each Non-Compact Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years.

(b) Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The Commission shall serve as the

trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Sec. 4.3.2.2. Allocation of Licenses.

(a) The Tribe, along with all other Compact Tribes, may acquire licenses to use Gaming Devices in excess of the number they are authorized to use under Sec. 4.3.1, but in no event may the Tribe operate more than 2,000 Gaming Devices, on the following terms, conditions, and priorities:

(1). The maximum number of machines that all Compact Tribes in the aggregate may license pursuant to this Section shall be a sum equal to 350 multiplied by the number of Non-Compact tribes as of September 1, 1999, plus the difference between 350 and the lesser number authorized under Section 4.3.1.

(2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

Number of Licensed Devices	Fee Per Device Per Annum
1-350	$0
351-370	$900

751-1250	$1950
1251-2000	$4350

(3) Licenses to use Gaming Devices shall be awarded as follows:

(i) First, Compact Tribes with no Existing Devices (i.e., the number of Gaming Devices operated by a Compact Tribe as of September 1, 1999) may draw up to 150 licenses for a total of 500 Gaming Devices;

(ii) Next, Compact Tribes authorized under Section 4.3.1 to operate up to and including 500 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (i)), may draw up to an additional 500 licenses, to a total of 1000 Gaming Devices;

(iii) Next, Compact Tribes operating between 501 and 1000 Gaming Devices as of September 1, 1999 (including tribes, if any, that have acquired licenses through subparagraph (ii)), shall be entitled to draw up to an additional 750 Gaming Devices;

(iv) Next, Compact Tribes authorized to operate up to and including 1500 gaming devices (including tribes, if any, that have acquired licenses through subparagraph (iii)), shall be entitled to draw up to an additional 500 licenses, for a total authorization to operate up to 2000 gaming devices.

(v) Next, Compact Tribes authorized to operate more than 1500 gaming devices (including tribes, if any, that have

acquired licenses through subparagraph (iv))., shall be entitled to draw additional licenses up to a total authorization to operate up to 2000 gaming devices.

(vi). After the first round of draws, a second and subsequent round(s) shall be conducted utilizing the same order of priority as set forth above. Rounds shall continue until tribes cease making draws, at which time draws will be discontinued for one month or until the Trustee is notified that a tribe desires to acquire a license, whichever last occurs.

(e) As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of $1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund. The license for any Gaming Device shall be canceled if the Gaming Device authorized by the license is not in commercial operation within twelve months of issuance of the license.

Sec. 4.3.2.3. The Tribe shall not conduct any Gaming Activity authorized by this Compact if the Tribe is more than two quarterly contributions in arrears in its license fee payments to the Revenue Sharing Trust Fund.

Sec. 4.3.3. If requested to do so by either party after March 7, 2003, but not later than March 31, 2003, the parties will promptly commence negotiations in good faith with the Tribe concerning any matters encompassed by Sections 4.3.1 and Section 4.3.2, and their subsections.

SEC. 5.0 REVENUE DISTRIBUTION

Sec. 5.1. (a) The Tribe shall make contributions to the Special Distribution Fund created by the Legislature, in accordance with the following schedule, but only with respect to the number of Gaming Devices operated by the Tribe on September 1, 1999:

Number of Terminals in Quarterly Device Base	Percent of Average Gaming Device Net Win
1-200	0%
201-500	7%
501-1000	7% applied to the excess over 200 terminals, up to 500 terminals, plus 10% applied to terminals over 500 terminals, up to 1000 terminals.
1000+	7% applied to excess over 200, up to 500 terminals, plus 10% applied to terminals over 500, up to 1000 terminals, plus 13% applied to the excess above 1000 terminals.

(b) The first transfer to the Special Distribution Fund of its share of the gaming revenue shall made at the conclusion of the first calendar quarter following the second anniversary date of the effective date of this Compact.

Sec. 5.2. Use of funds. The State's share of the Gaming Device revenue shall be placed in the Special Distribution Fund, available for appropriation by the Legislature for the following purposes: (a) grants, including any administrative costs, for programs designed to address gambling addiction; (b) grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the State Gaming Agency and the state Department of Justice in connection with the implementation and administration of the Compact; (d) payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and (e) any other purposes specified by the Legislature. It is the intent of the parties that Compact Tribes will be consulted in the process of identifying purposes for grants made to local governments.

Sec. 5.3. (a) The quarterly contributions due under Section 5.1 shall be determined and made not later than the thirtieth (30th) day following the end of each calendar quarter by first determining the total number of all Gaming Devices operated by a Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all terminals during the quarter by the Quarterly Terminal Base.

(b) Any quarterly contribution not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly contribution under Section 5.1 is overdue to the Special Distribution Fund, the Tribe shall pay to the Special Distribution Fund, in addition to the overdue quarterly contribution, interest on such amount from the date

the quarterly contribution was due until the date such quarterly contribution (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Entitlement to such interest shall be in addition to any other remedies the State may have.

(c) At the time each quarterly contribution is made, the Tribe shall submit to the State a report (the "Quarterly Contribution Report") certified by an authorized representative of the Tribe reflecting the Quarterly Device Base, the Net Win from all terminals in the Quarterly Device Base (broken down by Gaming Device), and the Average Device Net Win.

(d) If the State causes an audit to be made pursuant to subdivision (c), and the Average Device Net Win for any quarter as reflected on such quarter's Quarterly Contribution Reports is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly contribution plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less.

(e) The Tribe shall not conduct Class III gaming if more than two quarterly contributions to the Special Distribution Fund are overdue.

Sec. 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation. The Gaming Operations authorized under this Gaming Compact shall be owned solely by the Tribe.

Sec. 6.3. Prohibition Regarding Minors. (a) Except as provided in subdivision (b), the Tribe shall not permit persons under the age of 18 years to be present in any room in which Class III Gaming Activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from being present in any area in which Class III gaming activities are being conducted and in which alcoholic beverages may be consumed, to the extent required by the state Department of Alcoholic Beverage Control.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles. All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Gaming Compact, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency. The parties intend that the licensing process provided for in this Gaming Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility. (a) The Gaming Facility authorized by this Gaming Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Gaming Compact, the Tribal Gaming Ordinance, and IGRA. The license shall be reviewed and renewed, if appropriate, every two years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State Gaming Agency every two years. The Tribal Gaming Agency's certification to that effect shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to protect the health and safety of all Gaming Facility patrons, guests, and employees, all Gaming Facilities of the Tribe constructed after the effective date of this Gaming Compact, and all expansions or modifications to

a Gaming Facility in operation as of the effective date of this Compact, shall meet the building and safety codes of the Tribe, which, as a condition for engaging in that construction, expansion, modification, or renovation, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the Facility is located, or the Uniform Building Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect to any reference to such building and safety codes. Any such construction, expansion or modification will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. §§ 12101 et seq.

(c) Any Gaming Facility in which gaming authorized by this Gaming Compact is conducted shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy if it was not used for any Gaming Activities under IGRA prior to the effective date of this Gaming Compact, or, if it was so used, within one year thereafter. The issuance of this certificate shall be reviewed for continuing compliance every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any certificate hereunder. The Tribal Gaming Agency shall determine and certify that, as to new construction or new use for gaming, the Facility meets the Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the Tribe's Gaming

Activities prior to this Gaming Compact, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the Gaming Operation. The Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or safety of occupants or the integrity of the gaming operation.

(d) The State shall designate an agent or agents to be given reasonable notice of each inspection by the Tribal Gaming Agency's experts, which state agents may accompany any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c). The Tribal Gaming Agency and the State's designated agent or agents shall exchange any reports of an inspection within 10 days after completion of the report, which reports shall also be separately and simultaneously forwarded by both agencies to the Tribal Chairperson. Upon certification by the Tribal Gaming Agency's experts that a Gaming Facility meets applicable standards, the Tribal Gaming Agency shall forward the experts' certification to the State within 10 days of issuance. If the State's agent objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses. (a) In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or

welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the applicant is all of the following, in addition to any other criteria in IGRA or the Tribal Gaming Ordinance:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in this Gaming Compact, IGRA, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe. An applicant shall not be found to be unsuitable solely on the ground that the applicant was an employee of a tribal gaming operation in California that was conducted prior to the effective date of this Compact.

Sec. 6.4.4. Gaming Employees. (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which shall be subject to biennial renewal; provided that in accordance with Section 6.4.9,

those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

(b) Except as provided in subdivisions (c) and (d), the Tribe will not employ or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

(c) Notwithstanding subdivision (a), the Tribe may retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if: (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; (iii) the person is not an employee or agent of any other gaming operation; and (iv) the person has been in the continuous employ of the Tribe for at least three years prior to the effective date of this Compact.

(d) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must

be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and (iii) the person is not an employee or agent of any other gaming operation. For purposes of this subdivision, "enrolled member" means a person who is either (a) certified by the Tribe as having been a member of the Tribe for at least five (5) years, or (b) a holder of confirmation of membership issued by the Bureau of Indian Affairs.

(e) Nothing herein shall be construed to relieve any person of the obligation to apply for a renewal of a determination of suitability as required by Section 6.5.6.

Sec. 6.4.5. Gaming Resource Supplier. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars ($25,000) in any consecutive 12-month period within the 24-month period immediately preceding application, shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the Tribe's Operation or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Supplier to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to

constitute an application for renewal. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of Gaming Resources with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. Any agreement between the Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency.

Sec. 6.4.6. Financial Sources. Any person extending financing, directly or indirectly, to the Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing, provided that any person who is extending financing at the time of the execution of this Compact shall be licensed by the Tribal Gaming Agency within ninety (90) days of such execution. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the

date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. A Gaming Resource Supplier who provides financing exclusively in connection with the sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers. The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, financing provided by a federally regulated or state-regulated bank, savings and loan, or other federally- or state-regulated lending institution; or any agency of the federal, state, or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the Tribe.

Sec. 6.4.7. Processing Tribal Gaming License Applications. Each applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees. For applicants who

are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than 10 percent of the shares of the corporation, if a corporation; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any gaming authorized under this Gaming Compact, if that person or entity provided more than 10 percent of (a) the start-up capital, (b) the operating capital over a 12-month period, or (c) a combination thereof. For purposes of this Section, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Sec. 6.4.8. Background Investigations of Applicants. The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a gaming license under the standards set forth in Section 6.4.3, and to fulfill all requirements for licensing under IGRA, the Tribal Gaming Ordinance, and this Gaming Compact. The Tribal Gaming Agency shall not issue other than a temporary license until a determination is made that those qualifications have been met. In lieu of completing its own background

investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a state certification of non-objection previously issued under a gaming compact involving another tribe, or may rely on a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligation. An applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate any agreement the State Gaming Agency has with a source of the information other than the applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential or that provision of the information would violate state or federal law. If the Tribe adopts an ordinance confirming that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this Section, the Tribal Gaming Agency shall be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. The California Department of Justice shall provide services to the Tribal Gaming Agency through

the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

Sec. 6.4.9. Temporary Licensing of Gaming Employees. Notwithstanding anything herein to the contrary, if the applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the applicant has a criminal history or other information in his or her background that would either automatically disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine. Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made on the application. At any time after issuance of a temporary license, the Tribal Gaming Agency may suspend or revoke it in accordance with Sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation in accordance with subdivision (d) of Section 6.5.6. Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Sec. 6.5. Gaming License Issuance. Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal Gaming Agency.

Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses. (a) Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the applicant is determined to be unsuitable or otherwise unqualified for a gaming license. Pending consideration of revocation, the Tribal Gaming Agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

(b) (i) Except as provided in paragraph (ii) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall promptly revoke any license that has theretofore been issued to the person; provided that the Tribal Gaming Agency may, in its discretion, re-issue a license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Civil Code.

(ii) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal license issued to a person employed by the Tribe pursuant to Section 6.4.4(c) or Section 6.4.4(d).

Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation. The term of a tribal gaming license shall not exceed two years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license. Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal.

Sec. 6.5.3. Identification Cards. The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. Identification badges must display information including, but not limited to, a photograph and an identification number that is adequate to enable agents of the Tribal Gaming Agency to readily identify the person and

determine the validity and date of expiration of his or her license.

Sec. 6.5.4. Fees for Tribal License. The fees for all tribal licenses shall be set by the Tribal Gaming Agency.

Sec. 6.5.5. Suspension of Tribal License. The Tribal Gaming Agency may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

Sec. 6.5.6. State Certification Process. (a) Upon receipt of a completed license application and a determination by the Tribal Gaming Agency that it intends to issue the earlier of a temporary or permanent license, the Tribal Gaming Agency shall transmit to the State Gaming Agency a notice of intent to license the applicant, together with all of the following: (i) a copy of all tribal license application materials and information received by the Tribal Gaming Agency from the applicant; (ii) an original set of fingerprint cards; (iii) a current photograph; and (iv) except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency. Except for an applicant for licensing as a non-key Gaming Employee, as defined by agreement between the Tribal Gaming Agency and the State Gaming Agency, the Tribal Gaming Agency shall require the applicant also to file an

application with the State Gaming Agency, prior to issuance of a temporary or permanent tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling establishment subject to that Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, provided that such State Gaming Agency requirement shall be no greater than that which may be required of applicants for a State gaming license in connection with nontribal gaming activities and at a similar level of participation or employment. A determination of suitability is valid for the term of the tribal license held by the applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability at such time as the licensee applies for renewal of a tribal gaming license. The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof.

(b) Background Investigations of Applicants. Upon receipt of completed license application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be

licensed for association with a gambling establishment subject to the jurisdiction of the State Gaming Agency. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, the applicant will be required to pay the statutory application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19941(a), but any deposit requested by the State Gaming Agency pursuant to section 19855 of that Code shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to pay the application fee or deposit may be grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs. Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the applicant would be suitable, or that the applicant would be unsuitable, for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency and, if unsuitable, stating the reasons therefor.

(c) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number, and job descriptions of all non-key Gaming Employees.

(d) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be

heard. If the State Gaming Agency denies an application for a determination of suitability, that Agency shall provide the applicant with written notice of all appeal rights available under state law.

Sec. 7.0. COMPLIANCE ENFORCEMENT.

Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Sec. 7.2. Investigation and Sanctions. The Tribal Gaming Agency shall investigate any reported violation of this Gaming Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Tribal Gaming Ordinance, or this Gaming Compact. The

Tribal Gaming Agency shall report significant or continued violations of this Compact or failures to comply with its orders to the State Gaming Agency.

Sec. 7.3. Assistance by State Gaming Agency. The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in Section 7.1, or otherwise to protect public health, safety, or welfare. If requested by the Tribe or Tribal Gaming Agency, the State Gaming Agency shall provide requested services to ensure proper compliance with this Gaming Compact. The State shall be reimbursed for its actual and reasonable costs of that assistance, if the assistance required expenditure of extraordinary costs.

Sec. 7.4. Access to Premises by State Gaming Agency; Notification; Inspections. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions:

Sec. 7.4.1. Inspection of public areas of a Gaming Facility may be made at any time without prior notice during normal Gaming Facility business hours.

Sec. 7.4.2. Inspection of areas of a Gaming Facility not normally accessible to the public may be made at any time during normal Gaming Facility business hours, immediately

after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public areas of the Gaming Facility. Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

Sec. 7.4.3. (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after notice to the Tribal Gaming Agency, during the normal hours of the Gaming Facility's business office, provided that the inspection and copying of those papers, books or records shall not interfere with the normal functioning of the Gaming Operation or Facility. Notwithstanding any other provision of California law, all information and records that the State Gaming Agency obtains, inspects, or copies pursuant to this Gaming Compact shall be, and remain, the property solely of the Tribe; provided that such records and copies may be retained by the State Gaming Agency as reasonably necessary for completion of any investigation of the Tribe's compliance with this Compact.

(b)(i) The State Gaming Agency will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe, and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. The Tribe may avail itself of any and all remedies under state law for improper disclosure of information or documents. To the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to disclosure of any documents received from the Tribe, or any documents compiled from such documents or from information received from the Tribe, including any disclosure compelled by judicial process, and, in the case of any disclosure compelled by judicial process, will endeavor to give the Tribe immediate notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(ii) The Tribal Gaming Agency and the State Gaming Agency shall confer and agree upon protocols for release to other law enforcement agencies of information obtained during the course of background investigations.

(c) Records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those records, shall be exempt from disclosure under the California Public Records Act.

Sec. 7.4.4. Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where

such access is reasonably necessary to ensure compliance with this Compact.

Sec. 7.4.5. (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least 10 days' notice to the Sheriff's Department for the county in which the land is located.

(b) Transportation of a Gaming Device from the Gaming Facility within California is permissible only if: (i) The final destination of the device is a gaming facility of any tribe in California that has a compact with the State; (ii) The final destination of the device is any other state in which possession of the device or devices is made lawful by state law or by tribal-state compact; (iii) The final destination of the device is another country, or any state or province of another country, wherein possession of the device is lawful; or (iv) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.

(c) Gaming Devices transported off the Tribe's land in violation of this Section 7.4.5 or in violation of any permit issued pursuant thereto is subject to summary seizure by California peace officers.

Sec. 8.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION.

Sec. 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner:

Sec. 8.1.1. The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the power to conduct investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

Sec. 8.1.2. Ensuring the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility. Nothing herein shall be construed to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco.

Sec. 8.1.3. The physical safeguarding of assets transported to, within, and from the Gaming Facility.

Sec. 8.1.4. The prevention of illegal activity from occurring within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided below.

Sec. 8.1.5. The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereafter "incidents"). The procedure for recording incidents shall: (1) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page; and (4) require that each report include, at a minimum, all of the following:

(a) The record number.

(b) The date.

(c) The time.

(d) The location of the incident.

(e) A detailed description of the incident.

(f) The persons involved in the incident.

(g) The security department employee assigned to the incident.

Sec. 8.1.6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

Sec. 8.1.7. Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gaming within the State.

Sec. 8.1.8. The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

Sec. 8.1.9. Submission to, and prior approval, from the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.

Sec. 8.1.10. Addressing all of the following:

(a) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners;

(b) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations shall be visibly displayed or available to patrons in written form in the Gaming Facility;

(c) Specifications ensuring that betting limits applicable to any gaming station shall be displayed at that gaming station;

(d) Procedures ensuring that in the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with, industry practice and principles of fairness, pursuant to the Tribal Gaming Ordinance and any rules and regulations promulgated by the Tribal Gaming Agency.

Sec. 8.1.11. Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

Sec. 8.1.12. Maintenance of a cashier's cage in accordance with industry standards for such facilities.

Sec. 8.1.13. Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

Sec. 8.1.14. Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe, which technical specifications may be no less stringent than those approved by

a recognized gaming testing laboratory in the gaming industry.

Sec. 8.2. State Civil and Criminal Jurisdiction. Nothing in this Gaming Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360) or IGRA, to the extent applicable. In addition, criminal jurisdiction to enforce state gambling laws is transferred to the State pursuant to 18 U.S.C. §§ 1166(d), provided that no Gaming Activity conducted by the Tribe pursuant to this Gaming Compact may be deemed to be a civil or criminal violation of any law of the State.

Sec. 8.3. (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner.

(b) The Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that, if such official is elected through a tribal election process, that official may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the official has been found to be suitable. If requested by the tribal government or the Tribal Gaming

Agency, the State Gaming Agency assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency.

Sec. 8.4. In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to tribal gaming operations under this Section.

Sec. 8.4.1. (a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

(b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency

as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

(d) In exigent circumstances (e.g., imminent threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Association for consideration. If the regulation is disapproved by the Association, it shall cease to be effective, but may be re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (c).

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in the United States District Court where the Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of appeal). The disputes to be submitted to court action include, but are not limited to, claims of breach or violation of this Compact, or failure to negotiate in good faith as required by the terms of this Compact. In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the grounds that the Tribe has failed to exhaust its state administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resort to judicial process.

Sec. 9.2. Arbitration Rules. Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location as the parties may agree. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. Only one neutral arbitrator may be named, unless the Tribe or the State objects, in which case a panel of three arbitrators (one of whom is selected by each party) will be named. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized

by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding. Judgment on tne award may be entered in any federal or state court having jurisdiction thereof.

Sec. 9.3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section 9.0 may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 9.4. Limited Waiver of Sovereign Immunity. (a) In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this Section 9.0, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, including enforcement of a provision of this Compact requiring payment of money to one or another of the parties, or declaratory relief is sought); and

(3) No person or entity other than the Tribe and the State is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(b) In the event of intervention by any additional party into any such action without the consent of the Tribe and the State, the waivers of either the Tribe or the State provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State in respect to any such third party.

(c) The waivers and consents provided for under this Section 9.0 shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Sec. 10.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Sec. 10.1. The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare; provided that nothing herein shall be construed to

make applicable to the Tribe any state laws or regulations governing the use of tobacco.

Sec. 10.2. Compliance. For the purposes of this Gaming Compact, the Tribal Gaming Operation shall:

(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any

alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in Section 6.4.

(d) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits set out above.

(e) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency

of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(f) Comply with tribal codes and other applicable federal law regarding public health and safety.

(g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

(h) Adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(i) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling

establishment or lodging facility as an incentive or enticement.

(j) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting extensions of credit.

(k) Provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

Sec. 10.2.1. The Tribe shall adopt and, not later than 30 days after the effective date of this Compact, shall make available on request the standards described in subdivisions (a)-(c) and (e)-(k) of Section 10.2 to which the Gaming Operation is held. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal statute or regulation in lieu of a tribal standard in respect to any such matter, the applicable state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

Sec. 10.3 Participation in state statutory programs related to employment. (a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an

independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this Compact, or 60 days prior to the commencement of Gaming Activities under this Compact, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

(b) The Tribe agrees that its Gaming Operation will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including compliance with the provisions of the California Unemployment Insurance Code, and the Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

(c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe, the Tribal Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and

shall forward such amounts as provided in said Codes to the State.

Sec. 10.4. Emergency Service Accessibility. The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

Sec. 10.5. Alcoholic Beverage Service. Standards for alcohol service shall be subject to applicable law.

Sec. 10.6. Possession of firearms shall be prohibited at all times in the Gaming Facility except for state, local, or tribal security or law enforcement personnel authorized by tribal law and by federal or state law to possess fire arms at the Facility.

Sec. 10.7. Labor Relations.

Notwithstanding any other provision of this Compact, this Compact shall be null and void if, on or before October 13, 1999, the Tribe has not provided an agreement or other procedure acceptable to the State for addressing organizational and representational rights of Class III Gaming Employees and other employees associated with the Tribe's Class III gaming enterprise, such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate patronage at the Gaming Facility.

Sec. 10.8. Off-Reservation Environmental Impacts.

Sec. 10.8.1. On or before the effective date of this Compact, or not less than 90 days prior to the commencement of a Project, as defined herein, the Tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the environmental protection ordinance, the Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the Tribe's governmental interests.

Sec. 10.8.2. (a) Prior to commencement of a Project, the Tribe will:

(1) Inform the public of the planned Project

(2) Take appropriate actions to determine whether the project will have any significant adverse impacts on the off-Reservation environment;

(3) For the purpose of receiving and responding to comments, submit all environmental impact reports concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the county board of supervisors, for distribution to the public.

(4) Consult with the board of supervisors of the county or counties within which the Tribe's Gaming Facility is located, or is to be located, and, if the Gaming Facility is within a city, with the city council, and if requested by the board or council, as the case may be, meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts;

(5) Meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by proposed Project.

(b) During the conduct of a Project, the Tribe shall:

(1) Keep the board or council, as the case may be, and potentially affected members of the public apprized of the project's progress; and

(2) Make good faith efforts to mitigate any and all such significant adverse off-Reservation environmental impacts.

(c) As used in Section 10.8.1 and this Section 10.8.2, the term "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility and the term "environmental impact reports" means any environmental assessment, environmental impact report, or environmental impact statement, as the case may be.

Sec. 10.8.3. (a) The Tribe and the State shall, from time to time, meet to review the adequacy of this Section 10.8, the Tribe's ordinance adopted pursuant thereto, and the Tribe's compliance with its obligations under Section 10.8.2, to ensure that significant adverse impacts to the off-Reservation environment resulting from projects undertaken by the Tribe may be avoided or mitigated.

(b) At any time after January 1, 2003, but not later than March 1, 2003, the State may request negotiations for an amendment to this Section 10.8 on the ground that, as it presently reads, the Section has proven to be inadequate to protect the off-Reservation environment from significant adverse impacts resulting from Projects undertaken by the Tribe or to ensure adequate mitigation by the Tribe of significant adverse off-Reservation environmental impacts and, upon such a request, the Tribe will enter into such negotiations in good faith.

(c) On or after January 1, 2004, the Tribe may bring an action in federal court under 25 U.S.C. Sec. 2710(d)(7)(A)(i) on the ground that the State has failed to negotiate in good faith, provided that the Tribe's good faith in the negotiations shall also be in issue. In any such action, the court may consider whether the State's invocation of its rights under subdivision (b) of this Section 10.8.3 was in good faith. If the State has requested negotiations pursuant to subdivision (b) but, as of January 1, 2005, there is neither an agreement nor an order against the State under 25 U.S.C. Sec. 2710(d)(7)(B)(iii), then, on that date, the Tribe shall immediately cease construction and other activities on all projects then in progress that have the potential to cause

adverse off-Reservation impacts, unless and until an agreement to amend this Section 10.8 has been concluded between the Tribe and the State.

Sec. 11.0. EFFECTIVE DATE AND TERM OF COMPACT.

Sec. 11.1. Effective Date. This Gaming Compact shall not be effective unless and until all of the following have occurred:

(a) The Compact is ratified by statute in accordance with state law;

(b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. 2710(d)(3)(B); and

(c) SCA 11 is approved by the California voters in the March 2000 general election.

Sec. 11.2. Term of Compact; Termination.

Sec. 11.2.1. Effective. (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020.

(b) Once ratified, this Compact shall constitute a binding and determinative agreement between the Tribe and the State, without regard to voter approval of any constitutional amendment, other than SCA 11, that authorizes a gaming compact.

(c) Either party may bring an action in federal court, after providing a sixty (60) day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has materially breached this Compact. Upon issuance of such a declaration, the complaining party may unilaterally terminate this Compact upon service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the superior court for the county in which the Tribe's Gaming Facility is located. The parties expressly waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in Section 9.4(a).

Sec. 12.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 12.1. The terms and conditions of this Gaming Compact may be amended at any time by the mutual and written agreement of both parties.

Sec. 12.2. This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

Sec. 12.3. Process and Negotiation Standards. All requests to amend or renegotiate this Gaming Compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement

of the basis supporting the request. If the request meets the requirements of this Section, the parties shall confer promptly and determine a schedule for commencing negotiations within 30 days of the request. Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under Section 4.3.3(b) and this Section 12.0 shall be governed, controlled, and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court. The Chairperson of the Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

Sec. 12.4. The Tribe shall have the right to terminate this Compact in the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California.

Sec. 13.0 NOTICES.

Unless otherwise indicated by this Gaming Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

Governor	Tribal Chairperson
State Capitol	Bishop Paiute Tribe
Sacramento,	P.O. Box 548
California 95814	Bishop, California 93515

Sec. 14.0. CHANGES IN IGRA. This Gaming Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Gaming Compact, and when reference is made to the Indian Gaming Regulatory Act or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Gaming Compact, except to the extent that federal law validly mandates that retroactive application without the State's or the Tribe's respective consent

Sec. 15.0. MISCELLANEOUS.

Sec. 15.1. Third Party Beneficiaries. Except to the extent expressly provided under this Gaming Compact, this Gaming Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

Sec. 15.2. Complete agreement; revocation of prior requests to negotiate. This Gaming Compact, together with all addenda and approved amendments, sets forth the full and

complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

Sec. 15.3. Construction. Neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact.

Sec. 15.4. Most Favored Tribe. If, after the effective date of this Compact, the State enters into a Compact with any other tribe that contains more favorable provisions with respect to any provisions of this Compact, the State shall, at the Tribe's request, enter into the preferred compact with the Tribe as a superseding substitute for this Compact; provided that the duration of the substitute compact shall not exceed the duration of this Compact.

Sec. 15.6. Representations.

By entering into this Compact, the Tribe expressly represents that, as of the date of the Tribe's execution of this Compact: (a) the undersigned has the authority to execute this Compact on behalf of his or her tribe and will provide written proof of such authority and ratification of this Compact by the tribal governing body no later than October 9, 1999; (b) the Tribe is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government. In entering into this Compact, the

State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Compact. Failure to provide written proof of authority to execute this Compact or failure to provide written proof of ratification by the Tribe's governing body will give the State the opportunity to declare this Compact null and void.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Bishop Paiute Tribe.

STATE OF CALIFORNIA

_____

By Gray Davis
Governor of the State of California

Executed this 9th day of December, 1999, at Sacramento, California.

BISHOP PAIUTE TRIBE

_____

By Monty Bengochia
Chairperson of the Bishop Paiute Tribe

Executed this 23rd day of September, 1999, at Bishop, California.

ATTEST:

_____

By Bill Jones
Secretary of State, State of California

ADDENDUM "A" TO TRIBAL-STATE GAMING COMPACT BETWEEN THE BISHOP PAIUTE TRIBE AND THE STATE OF CALIFORNIA

Modification No. 1

Section 6.4.4(d) is modified to read as follows:

Section 6.4.4(d) is modified to read as follows:

(d) (1) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe, as defined in this subdivision, and if ~~(i)~~ (A) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; ~~(ii)~~ (B) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and ~~(iii)~~ (C) the person is not an employee or agent of any other gaming operation.

(2) For purposes of this subdivision, "enrolled member" means a person who is either: ~~(a)~~ (A) a person certified by the Tribe as having been a member of the Tribe for at least five (5) years; ~~or (b)~~ (B) a holder of confirmation of membership issued by the Bureau of Indian Affairs; or (C), if the Tribe has 100 or more enrolled members as of the date of execution of this Compact, a person certified by the Tribe as being a member pursuant to criteria and standards specified

in a tribal Constitution that has been approved by the Secretary of the Interior.

Modification No. 2

Section 8.4.1(e) is modified to read as follows:

(e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final regulation of the NIGC, or is unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0; provided that, if the regulation of the State Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.

Modification No. 3

Section 12.2 is modified to read as follows:

Sec. 12.2. (a) This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

(b) Nothing herein shall be construed to constitute a waiver of any rights under IGRA in the event of an expansion of the scope of permissible gaming resulting from a change in state law.

Modification No. 4

Section 11.2.1(a) is modified to read:

Sec. 11.2.1. Effective. (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2020. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Compact or to enter into a new compact. If the parties have not agreed to extend the date of this Compact or entered into a new compact by the termination date, this Compact will automatically be extended to June 30, 2022, unless the parties have agreed to an earlier termination date.

Modification No. 5

Section 12.4 is modified to read as follows:

Sec. 12.4. ~~The Tribe shall have the right to terminate this Compact~~ In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California, the Tribe shall have the right to: (i) termination of this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III gaming, or (ii) continue under the

Compact with an entitlement to a reduction of the rates specified in Section 5.1(a) following conclusion of negotiations, to provide for (a) compensation to the State for actual and reasonable costs of regulation, as determined by the state Department of Finance; (b) reasonable payments to local governments impacted by tribal government gaming; (c) grants for programs designed to address gambling addiction; (d) and such assessments as may be permissible at such time under federal law.

Modification No. 6

Section 10.2(d) is modified to read as follows:

(d) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and ~~that~~ the Tribe shall request its insurer to ~~provide reasonable assurance that those claims will be~~ promptly and fairly ~~adjudicated, and that legitimate claims will be paid~~ settle all valid claims; provided that nothing herein requires the Tribe to agree to liability for punitive damages, any intentional acts not covered by the insurance policy, or attorneys' fees. On or before the effective date of this Compact or not less than 30 days prior to the commencement of Gaming Activities under this Compact, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing any claims for such money

damages; provided that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the policy limits and insurance coverage set out above.

Modification No. 7

Section 10.2(k) is modified to read as follows:

(k) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Bishop Paiute Tribe.

STATE OF CALIFORNIA

_____

By Gray Davis
Governor of the State of California

Executed this 9th day of December, 1999, at Sacramento, California.

BISHOP PAIUTE TRIBE

_____

By Monty Bengochia
Chairperson of the Bishop Paiute Tribe

Executed this 23rd day of September, 1999, at Bishop, California.

ATTEST:

_____

By Bill Jones
Secretary of State, State of California

ADDENDUM "B" TO TRIBAL-STATE GAMING COMPACT BETWEEN THE BISHOP PAIUTE TRIBE AND THE STATE OF CALIFORNIA

In compliance with Section 10.7 of the Compact, the Tribe agrees to adopt an ordinance identical to the Model Tribal Labor Relations Ordinance attached hereto, and to notify the State of that adoption no later than October 12, 1999. If such notice has not been received by the State by October 13, 1999, this Compact shall be null and void. Failure of the Tribe to maintain the Ordinance in effect during the term of this Compact shall constitute a material breach entitling the State to terminate this Compact. No amendment of the Ordinance shall be effective unless approved by the State.

Attachment: Model Tribal Labor Relations Ordinance.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Bishop Paiute Tribe.

STATE OF CALIFORNIA

_____

By Gray Davis
Governor of the State of California

Executed this 9th day of December, 1999, at Sacramento, California.

BISHOP PAIUTE TRIBE

_____

By Monty Bengochia
Chairperson of the Bishop Paiute Tribe

Executed this 23rd day of September, 1999, at Bishop, California.

ATTEST:

_____

By Bill Jones
Secretary of State, State of California

BISHOP TRIBAL COUNCIL

ORDINANCE T99-01

AN ORDINANCE OF THE BISHOP TRIBAL COUNCIL ADOPTING A TRIBAL LABOR RELATIONS ORDINANCE

The Bishop Tribal Council, acting as the governing body for the Bishop Paiute Tribe and pursuant to its authority thereto adopts the Tribal Labor Relations Ordinance, dated September 14, 1999 as mandated by the State of California as a pre-condition to the State of California signing a Class III Tribal/State Compact.

The Tribal Labor Relations Ordinance is attached hereto and incorporated within this ordinance.

It is expressly stated and the intent of this Ordinance is that it shall not become effective (Tribal Labor Relations Ordinance) until the threshold of applicability provisions of Section 1 are triggered.

The foregoing Ordinance NO. T99-01 was passed and adopted this 11th day of October, 1999 by the following vote:
YES 4 NO 0 ABSENT 0

ATTEST

_____ October 11th, 1999
Monty Bengochia, Chairman Date

_____ October 11th, 1999
Secretary Date

PAIUTE PROFESSIONAL BUILDING - 50 TU SU LANE
- BISHOP, CA 93514
PHONE (760) 873-3584 FAX (760) 873-4143
E-Mail mervin@telis.org

ATTACHMENT TO
ADDENDUM B

TRIBAL LABOR RELATIONS ORDINANCE

September 14, 1999

Section 1: Threshold of applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to a tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 2: Definition of Eligible Employees

(a) The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

(3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(4) any cash operations employee who is a "cage" employee or money counter; or

(5) any dealer.

Section 3: Non-interference with regulatory or security activities

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of tribe and its agents.

Section 4: Eligible Employees free to engage in or refrain from concerted activity

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Section 5: Unfair Labor Practices for the tribe

It shall be an unfair labor practice for the tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the tribe and/or employer and a certified union from agreeing to union security or dues checkoff;

(3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;

(4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 6: Unfair Labor Practices for the union

It shall be an unfair labor practice for a labor organization or its agents:

(1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 11;

(3) to force or require the tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(4) to refuse to bargain collectively with the tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;

(5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Section 7: Tribe and union right to free speech

The tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 8: Access to Eligible Employees

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The

tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

(1) security and surveillance systems throughout the casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last

name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

(e) The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

Section 9: Indian preference explicitly permitted

Nothing herein shall preclude the tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the tribe's right to follow tribal law, ordinances, personnel policies or the tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the tribe's customs and traditions shall govern.

Section 10: Secret ballot elections required

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or union, the election officer may

order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

(d) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

Section 11: Collective bargaining impasse

Upon recognition, the tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures sets forth in Section 13 (b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703 (4).

Section 12: Decertification of bargaining agent

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held 30 days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than 90 days and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

Section 13: Binding dispute resolution mechanism

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may

proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

(1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and

Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more that two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at

issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BISHOP PAIUTE TRIBE in its official capacity and as a representative of its Tribal members and BISHOP PAIUTE GAMING CORPORATION DBA the PAIUTE PALACE CASINO Plaintiffs,	)
vs.	)
COUNTY OF INYO, PHILLIP MCDOWELL, individually and in his official capacity as District Attorney of Inyo County; DANIEL LUCAS, individually and in his official capacity of Sheriff of the County of Inyo Defendants	)

Case No.:

COMPLAINT FOR:

1. DECLARATORY RELIEF

2. INJUNCTIVE RELIEF

3. VIOLATION OF CIVIL RIGHTS UNDER THE UNITED STATES CONSTITUTION - DAMAGES AND ATTORNEY FEES

4. SUPPLEMENTAL JURISDICTION PURSUANT TO 28 U.S.C. §1267(a); VIOLATION OF THE CONSTITUTION OF THE STATE OF CALIFORNIA

DEMAND FOR JURY TRIAL

JURISDICTION

1. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1337, 1343(i)(3)(4) in that Plaintiff's claims arise under federal common law of Indian affairs that allocates jurisdiction among the federal government, the tribes, and the states and presents federal questions related to the limitations of jurisdiction by states over federally recognized Indian tribes pursuant to Article I, Section 8 of the United States Constitution, 18 U.S.C. §1162 (hereinafter referred to as "Public Law 280"), as well as under 25 U.S.C. §2701, *et seq.* (Indian Gaming Regulatory Act of 1988, hereinafter referred to as "IGRA"), an Act of Congress regulating commerce between the States and the Indian Tribes, and plaintiffs are Indian Tribes and tribally-owned businesses organized under the laws of the Bishop Paiute Tribe (Tribe); and 42 U.S.C. §§1983 and 1988, in that Defendants are alleged to have acted under color of the laws of the State of California to deprive Plaintiffs and the members of the Tribe of rights secured under the Constitution and laws of the United States. This Court also has jurisdiction to hear supplemental matters concerning alleged violations of the laws of the State of California pursuant to 28 U.S.C. §1267(a).

VENUE

2. Venue is in this District under 29 U.S.C. §1391(b) and 1392 in that all Defendants reside or maintain their respective principal place of business in Inyo County, the acts of which this complaint is made occurred within Inyo County, the

personal property which is the subject of this action is located in Inyo County, and Plaintiffs reside in Inyo County.

PARTIES

3. Plaintiffs the Bishop Paiute Gaming Corporation DBA the Paiute Palace Casino (Casino), a tribally owned casino operated under the Bishop Paiute Gaming Corporation, a political subdivision of Plaintiff Bishop Paiute Tribe. The Bishop Paiute Tribe is a federally recognized Indian Tribe and is an "Indian Tribe" within the meaning of IGRA, 25 U.S.C. §2703(5).

4. Defendant Daniel Lucas (hereinafter "Lucas") is the duly-elected Sheriff of the County of Inyo, California, and is sued in both his individual and official capacity. At all times relevant hereto, Defendant Lucas was and remains the chief law enforcement office of Defendant Inyo County, and as such is responsible for the promulgation and implementation of the policies and procedures by which the peace is kept in the County of Inyo, including determining whether, under what circumstances, when and how the County of Inyo will enforce the laws of the State of California and the County of Inyo on Indian Reservations within said County, and determining the jurisdictional limitations the County of Inyo in its implementation of the laws of the State of California and the County of Inyo on Indian Reservations within said County, and for authorizing and supervising the enforcement of said laws on said Reservations by Inyo County Sheriff's deputies and other persons acting in concert with them or under their direction or control.

5. Defendant Phillip McDowell (hereinafter "McDowell") is the duly-elected District Attorney of the County of Inyo, and is sued both in his individual and official capacity. As District Attorney, Defendant McDowell is responsible for the promulgation and implementation of the policies and procedures by which criminal investigations and prosecutions are initiated in the courts of the State of California against persons charged with violating the laws of the State and the County of Inyo, for determining the limitations of the County's jurisdiction as it relates to the commencement of investigations and prosecutions of State and County-defined offenses which occur on federal-tribal lands, and for authorizing and supervising the initiation and maintenance of prosecutions for violations of said laws.

GENERAL ALLEGATIONS

6. The Bishop Paiute Tribe is a federally recognized Tribe and is the beneficial owner of and exercises jurisdiction over the Bishop Paiute Reservation, which is located within the State of California.[1] Title to the lands comprising the Reservation is held in trust for the Tribe by the United States of America, and constitutes both "Indian lands" within the meaning of 25 U.S.C. §2703(4) and "Indian country" within the meaning of 18 U.S.C. §§1162, 1166.

7. Historically, the federal government possesses plenary and exclusive power to deal with Indian Tribes to regulate and

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[1] Also known as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California

protect Indians and their property against interferences, including interferences by state governments.

8. The Bishop Paiute Tribe possesses sovereign immunity, which cannot be waived except by the Tribe itself or by Congress, and such a waiver must be express and unequivocal. The sovereign immunity of the Bishop Paiute Tribe is also shared by the Bishop Paiute Gaming Corporation, as a political subdivision of the Tribe.

9. 18 U.S.C. §1162 (hereinafter referred to as "Public Law 280") passed by Congress in 1953 provides in part that "Each of the States. . . listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State. . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State . . . , and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State. . .". The State of California is one of the states identified within P.L. 280 as being delegated jurisdiction over offenses committed by or against Indians within Indian country.10. The transfer of civil jurisdiction to state governments pursuant to 28 U.S.C. §1360, also known as P.L. 280, uses language that is virtually identical to 16 U.S.C. §1162. 28 USC Section §1360 provides in part that: "Each of the states listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the state to the same extent that such state has jurisdiction over other civil causes of action, and those civil laws of such state that are of general application to private persons or

private property shall have the same force and effect within such Indian country as they have elsewhere within the state." The State of California is one of the states identified within P.L. 280 as being delegated jurisdiction over civil matters which occur by or against Indians within Indian country.

11. The primary concern of Congress behind the passage of P.L. 280 (18 USC §1162) was to address the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement. Notably absent from P.L. 280 is any conferral of state jurisdiction over Indian tribes themselves. P.L. 280 does not include a waiver of tribal sovereign immunity.

12. P.L. 280 has never been interpreted as giving jurisdiction over tribal governments to states and their political subdivisions to enforce state laws against tribal governments.

13. Historically, state jurisdiction over reservations has been strongly disfavored in order to protect Indian sovereignty from state interference. Established principles of statutory construction require the starting point of any analysis is not the assumption that the state has jurisdiction, but rather that the state is without jurisdiction over the reservation.

14. Any ambiguities in statutory sections should be resolved in favor of the Indians and, thus, against the authority of the state to exercise jurisdiction.

15. In 1988, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. §§2701 *et seq.*, providing a statutory basis for Indian tribes to engage in gaming as a

means of promoting tribal economic development, self-sufficiency and strong tribal governments. IGRA specifies that the only role the State may play in the Tribe's gaming operation is pursuant to a tribal-state compact. Pertinent provisions of 25 U.S.C. §2710(d)(3)(C) state that a compact may include provisions related to: the application of criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activities; the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations; and any other subjects that are directly related to the operation of gaming activities.

16. The Bishop Paiute Tribe executed a Tribal/State compact on September 23, 1999 with the State of California. Contained within the Preamble to the compact: "The State enters into this Compact out of respect for the sovereignty of the Tribe; . . .to initiate a new era of tribal-state cooperation in areas of mutual concern..." The compact became effective upon approval by the Secretary of the Interior and publication in the Federal Register, which occurred on May 16, 2000. Access by State officials to tribal records related to the Plaintiff's tribal casino must be negotiated for on a government-to-government basis between the State of California and the Bishop Paiute Tribe. At the time of the initial search and seizure referred to hereinafter, no agreement between the State and the Tribe regarding the scope of the State's jurisdiction to obtain access to the Tribe's records related to the casino was in effect. The scope of access to tribal records the State negotiated for is memorialized in Section 7.4.3 of the Tribal/State Compact, which provides the State limited access to the Tribe's Gaming Operation or

Facility records. State access to tribal records is limited . Only those records needed to ensure that the Tribe is in compliance with the terms of the compact, and nothing more are available.

17. Shortly after February 14, 2000, personnel for the Paiute Palace Casino received a request for records for three casino employees, all tribal members, from the Inyo County District Attorney's Office. The stated purpose of the request was to conduct an investigation into potential welfare fraud. The correspondence containing the request was forwarded to the Tribe's attorney, who responded in writing on behalf of the Tribe on February 28, 2000. The correspondence apprised Defendant's that it is Plaintiff's long standing custom, practice and policy that the information requested would not be provided unless the Tribe was authorized to do so in writing by the employees whose records were being sought.

18. On March 23, 2000, a search warrant was obtained by officials of the District Attorney's Office for the County of Inyo.

19. The search warrant stated that the only records that were to be obtained were "Payroll records for Patricia Dewey, date of birth 9-20-59. . . ; Clifford Dewey, date of birth 11-27-54 . . . ; and Tinya Hill, date of birth 2-23-79 . . . for the period of April 1998 through June 1998." All three individuals are members of the Bishop Paiute Tribe.

20. On March 23, 2000, Anita Sonke, an employee of the Paiute Palace Casino received a telephone call from Leslie Nixon (Nixon), District Attorney fraud investigator for the

County of Inyo, asking if she would be in the office that afternoon. Ms. Sonke replied that she would. Ms. Sonke was never apprised by Defendant Nixon that the District Attorney intended to execute a search warrant to obtain confidential personnel records.

21. On March 23, 2000, the search warrant was executed upon the Paiute Palace Casino by the District Attorneys Office with the assistance of the Sheriffs Department for the County of Inyo by the use of force and intimidation. Deadbolt cutters were used to cut the locks off of the storage facility where the confidential personnel records were stored. Defendants did not limit their seizure to the records of those individuals identified within the search warrant, but additionally seized the confidential personnel records of seventy-eight employees who were not subject to criminal investigation. Tribal personnel were not given the opportunity to redact from the seized documents confidential information pertaining to individuals not identified by the terms and limitations of the search warrant. Tribal personnel repeatedly advised Defendants that they did not have jurisdiction to execute search warrants upon sovereign tribal governments, with Defendants refusing to abate their search and seizure of tribal documents.

22. Subsequent to July 13, 2000, the attorney for the Bishop Paiute Tribe, received correspondence from Defendant McDowell, indicating that the County of Inyo wished to obtain the personnel records for six additional Casino employees for the period of July 1999 through the present. All individuals identified again were members of the Bishop Paiute Tribe.

23. Plaintiffs allege, based upon information and belief, that the investigations conducted by the District Attorney's Office are random in nature. There was no probable cause to believe that any of the individuals being investigated have in fact committed any type of welfare fraud. That is, the District Attorney's Office is merely checking with the State Franchise Tax Board to match California State welfare recipients with income reported by employers. Plaintiff's employ and have employed such classes of individuals.

24. Plaintiffs' allege, based upon information and belief, that the County of Inyo has within their policies and guidelines less intrusive means of investigating instances of potential welfare fraud, such as initiating administrative proceedings whereby individual recipients of welfare benefits shall be required to dispute allegations of unlawful receipt of said welfare benefits.

25. Plaintiffs allege, based upon information and belief, that all Defendants have failed to maintain an adequate policy and training program whereby Defendant's are fully informed of the limitations and scope of their jurisdiction as it relates to addressing matters concerning sovereign tribal governments.

FIRST CLAIM FOR RELIEF DECLATORY RELIEF AGAINST ALL DEFENDANTS

26. Plaintiffs re-allege each of the allegations set forth in Paragraphs 1 through 25 above, and by this reference incorporates each of the allegations herein as if set forth in full.

27. Public Law 280 cannot be interpreted in a manner that provides the State of California and its political subdivisions as having the ability to exert criminal jurisdiction over the Bishop Paiute Tribe in the manner in which the County of Inyo has acted. The Bishop Paiute Tribe was not alleged to have violated the laws of the State of California, is not the subject of criminal investigation for any violation of the laws of the State of California, and as such Public Law 280 is inapplicable under these circumstances.

28. An actual controversy exists between Plaintiffs and Defendants in that Plaintiffs contends that Defendants lack any jurisdiction whatsoever to apply or enforce California laws regarding search and seizure of documents pertaining to criminal investigations against the Bishop Paiute Tribe and its political subdivisions. More specifically, Plaintiffs contends that PL 280 does not confer state criminal jurisdiction over Tribal employee records belonging to and under the control of the Bishop Paiute Tribe when the investigation involves past and/or present employees of the Tribe's wholly-owned gaming facility. Defendants, on the other hand, have embraced a policy that Public Law 280 gives Defendants jurisdiction over sovereign tribal governments to execute search warrants in the manner described herein. Such an interpretation acts as an infringement upon the Bishop Paiute Tribe's right to remain free from state interference with the Tribe's right to self-governance as proscribed by federal law.

SECOND CLAIM FOR RELIF DECLARATORY RELIEF AGAINST ALL DEFENDANTS

28. Plaintiffs re-alleges each of the allegations set forth in Paragraphs 1 through 27 above, and by this reference incorporates each such allegation herein as if set forth in full.

29. In the alternative, Plaintiffs allege that the Indian Gaming Regulatory Act, 25 U.S.C. §2701 *et seq*., preempts whatever jurisdiction the State of California otherwise might have to directly apply and enforce California's laws against Plaintiffs, their officers, agents, employees, contractors and patrons in any manner within the Paiute Palace Casino.

30. The Tribal/State Compact, which was executed on September 23, 1999, expressly limited the State's access to Tribal records. Access was only to ensure that the Tribe is in compliance with the terms of the compact, and nothing more.

31. Without a Tribal/State Compact in place, the State would have no rightful access to Plaintiffs' Casino records. With a Tribal/State Compact in place, the State's access to Plaintiff's Casino records is expressly limited to the terms negotiated for pursuant to a Tribal/State compact.

32. An actual controversy exists between Plaintiffs and Defendants in that Plaintiffs contend that Defendants lack any jurisdiction whatsoever to apply or enforce California's laws regarding search and seizure of documents pertaining to criminal investigation against the Plaintiffs themselves, and that any jurisdiction to access Plaintiff's casino records must be negotiated for pursuant to a Tribal/State Compact. Defendants have embraced a policy that they possess such

jurisdiction under Public Law 280, and such jurisdiction has not been preempted by IGRA and thus they possess jurisdiction to directly enforce the laws of this state related to search and seizure of documents directly upon sovereign tribal governments such as Plaintiffs'.

THIRD CLAIM FOR RELIEF VIOLATION OF CIVIL RIGHTS AGAINST ALL DEFENDANTS— 42 U.S.C. §1983

33. Plaintiffs re-allege each of the allegations set forth in Paragraphs 1 through 32 above, and by this reference incorporates each such allegation herein as if set forth in full.

34. Plaintiffs are informed and believes, and upon that basis allege that in taking the actions of which this complaint is made herein, Defendant McDowell acted consistently with the policies of Defendant County and on behalf of Defendant County in his capacity as County District Attorney, and formulator and executor of said County's policies and procedures, and personally knew of, and in bad faith approved and directed the above-described seizure of Plaintiffs' confidential casino personnel records from the casino.

35. Plaintiffs are informed and believe, and upon that basis alleges that, when Defendant McDowell applied to the Superior Court for a warrant to search the premises of the Plaintiffs' casino, he had no reasonable basis upon which to believe that he had jurisdiction to execute such a warrant pursuant to Public Law 280 or any other state or federal law.

36. Plaintiffs are informed and believes, and upon that basis allege that Defendant McDowell acted under color of the laws of the State of California in obtaining from the Superior Court Search Warrant No. 427, and that but for Defendant McDowell's (bad faith) actions, said Superior Court would not have issued said search warrant, and thus Plaintiffs would not have sustained the damage which resulted from the execution of that warrant by Defendants County of Inyo through Defendants McDowell, Lucas, Christianson, Nixon, Doe Defendants 1-50 and others acting in concert with them.

37. In the alternative, if it is not the custom, habit or policy of Defendant's County, District Attorney and Sheriff to act in the manner described above, then the single decision to execute the search warrant upon Plaintiffs, that the decision to execute a search warrant in this situation was made by Defendants McDowell and Lucas, who are an officials who possess with authority to render a final decision to act in the manner described above.

38. Each of the defendants, individually and in concert with the others, acted under pretense and color of law and in their official capacity, but said acts were beyond the scope and jurisdiction and without authorization of law and in abuse of their powers, and each defendant acted willfully, knowingly, and with specific intent to deprive the Tribe of rights secured by Plaintiff's by the Fourth and Fourteenths Amendmentss to the Constitution of the United States, and by 42 U.S.C. §1983, as well as Article I, §8, Cl. 3 of the Constitution of the United States, and IGRA.

39. As a direct and proximate result of the acts of Defendants County of Inyo through Defendants McDowell

and Lucas, Plaintiffs have suffered an injury in fact, including destruction of tribal property, i.e. locks, which were cut off by the use of deadbolts. Additionally, injury to Tribe's right to self-governance has been violated as a direct result of Defendant's assertion of jurisdiction in a manner, which is contrary to federal law and policies.

FOURTH CLAIM FOR RELIEF
INJUNCTIVE RELIEF

40. Plaintiff's re-allege each of the allegations set forth in Paragraphs 1 through 39 above, and by this reference incorporates each such allegation herein as if set forth in full.

41. Unless restrained and enjoined by this Court, Defendants, their deputies and subordinates and persons working in concert with them will continue to act in excess of their jurisdiction and in derogation of federal laws and Plaintiffs' sovereignty and right to self governance which will inflict upon Plaintiffs and its members severe and irreparable injury for which there is no adequate remedy at law.

42. As stated above, Defendants have, according to their July 2000 notification, put Plaintiffs on notice that Defendants are seeking additional personnel records from Plaintiffs, all under threat of duplicating their prior procedures of executing a search warrant by way of the use of threats of force and intimidation and actually obtaining personnel records belonging to and in the possession of an independent Tribal sovereign, if not enjoined by this court.

FIFTH CLAIM FOR RELIEF
DECLARATORY RELIEF
SUPPLEMENTAL JURISDICTION PURSUANT TO 28 U.S.C. §1367(a)
VIOLATION OF THE CONSTITUTION OF THE STATE OF CALIFORNIA

43. Plaintiffs re-allege against all Defendants each of the allegations set forth in Paragraphs 1 through 42 above, and by this reference incorporate each such allegation herein as if set forth in full.

44. 28 U.S.C. §1367(a) provides this Court supplemental jurisdiction to rule on matters related to state law when those claims are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Plaintiffs allege that this claims is so interrelated that in the interest of justice, this Court should accept jurisdiction to hear this matter which requires an interpretation of the laws of the State of California.

45. In 1953, when Congress contemplated the passage of P.L. 280, a review of the six enumerated states laws and constitutions was conducted to determine if each state's laws expressly precluded those states from assuming jurisdiction over offenses and incidents that occurred on Indian lands between and Indians and non-Indians. California's laws and constitution did not expressly prohibit assumption of jurisdiction in the manner proscribed by P.L.280. However, the State of California had never in the past had jurisdiction over offenses that occurred on Indian lands between Indians and non-Indians, and as such P.L. 280 mandated assumption

of jurisdiction by the State of California in a manner that had never been assumed before by the State of California.

46. The powers of the California state government are legislative, executive and judicial. Persons charged with the exercise of one power under one branch of government may not exercise power under either of the other branches of government, except as permitted by the Constitution. Judicial interpretation of this mandate proscribed within Cal. Const. Art. III, §3 has concluded that it is within the province of the Legislative branch of the State of California to establish the policies of this state with the passage of laws, while it is the responsibility of the Executive branch to see to it that those laws are faithfully executed. It is the responsibility of the Judicial branch to interpret those laws.

47. The assumption or expansion of jurisdiction is a policy decision, which must be made by the Legislature. The fundamental act of establishing policy cannot be performed by the Executive or Judicial branches, unless delegated to those branches with safeguards built in by the Legislature to prevent an abuse of powers. This concept is basic to the principle of separation of powers. The purpose of this doctrine is to assure that truly fundamental issues will be resolved by the Legislature.

48. The Constitution of the State of California is silent on the issue of expanding civil and criminal jurisdiction into lands held in trust by the federal government by the Executive and Judicial branches of California government. When a state's constitution is silent on a particular issue the legislature should the body of the state government to address the issue.

The Legislature has never addressed if and how the State of California should accept jurisdiction as described by P.L.280.

49. Penal Code 830.1 defines the territorial limits of the State's jurisdiction. These territorial limits do not include "Indian country." The laws of the State of California have never been amended to expand the territorial limits of the State's jurisdiction to include jurisdiction over Indian lands. As such, law enforcement official's jurisdiction has never been expanded pursuant to state law to include jurisdiction over Indian lands. Such an affirmative expansion of jurisdiction must be performed by the policy making branch of the government of the State of California: the Legislature.

50. Judicial jurisdiction may be absent if the criminal act or omission took place outside the territorial boundaries of the state. If the criminal statute itself purported to apply extraterritorially it would be void for lack of legislative jurisdiction; and if the court attempts to apply a valid statute to extraterritorial activities beyond the power of the state to control, it is acting without judicial jurisdiction. This fundamental common law and constitutional principle limited state power to its boundaries has many applications in the civil law and in the criminal law.

51. Without affirmative actions taken by the policy making body of the State of California, i.e. the Legislative branch of government, the assumption of jurisdiction by the Executive and Judicial branches are without foundation in the laws of the State of California. As such, the acts of the Executive and Judicial branches of the government of the State of California as it relates to the application of P.L. 280 are in violation of Cal. Const. Art. III, §3, and as such their acts are void and

without legal effect, unless and until the California Legislature clearly establishes the policy as to how the State of California shall accept jurisdiction pursuant to P.L. 280, and alternatively delegates to the Executive and Judicial branches the authority to establish certain policies, building in procedural safeguards to ensure that such a delegation of power is not abused.

52. The Tenth Amendment of the Constitution of the United States precludes Congress from imposing such obligations and responsibilities on states. Accordingly, Public Law 280 is defective under the Tenth Amendment of the Constitution of the United States.

53. An actual controversy exists between Plaintiffs and Defendants in that Plaintiffs contend that Defendants lack any jurisdiction whatsoever to apply or enforce Public Law 280, unless and until the California Legislature affirmatively acts and clearly accepts jurisdiction, and clearly defines the scope and boundaries of the authority of the Executive and Judicial branches of the State's government as it relates to the assertion of state laws on tribal lands. Defendants contend that they possess such jurisdiction under Public Law 280 to act in the manner that they have to date and in the future, and thus they possess jurisdiction to directly enforce the laws of this state related to search and seizure directly upon sovereign tribal governments.

WHEREFORE, Plaintiffs pray as follows:

Pursuant to its First Claim for Relief:

1. That the Court enter judgment in favor of Plaintiffs and against Defendants, declaring that Public Law 280 does not give States and their political subdivisions authority to exert jurisdiction over tribal governments in the manner described herein. Specifically, P.L. 280 does not confer state criminal jurisdiction over tribal employee records, which belong to and are under the complete control of the Bishop Paiute Tribe or its Tribally-owned casino.

2. That the Court enter judgment in favor of Plaintiffs and against Defendants, declaring that Defendant's actions exceeded the scope of authority provided for by Public Law 280, and as such Defendant's actions violated federal laws and the Plaintiffs' right to remain free from state interference with the Plaintiffs' right to self-governance.

Pursuant to the Second Claim for Relief:

3. That in the alternative, the Court enter judgment in favor of Plaintiffs and against Defendants declaring that any jurisdiction Defendants otherwise might have had to enforce the laws of the State of California on Plaintiffs, their officers, agents, employees, contractors and patrons in any manner within the Paiute Palace Casino has been preempted by the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et seq. That the only access a State may have to the records of a tribal casino must be negotiated for pursuant to a tribal-state compact.

4. That the Court enter judgment in favor of Plaintiffs and against Defendants declaring that at the time of the initial seizure of the Plaintiffs' confidential personnel records related to the Tribe's casino employees, no Tribal/State Compact was in effect. As such, Defendants had no authority to access Plaintiffs' casino records, and the actions of Defendants were unlawful and violative of Plaintiff's rights under IGRA to engage in gaming without interference, except as provided within a tribal-state compact.

5. That the Court enter judgment in favor of Plaintiffs and against Defendants declaring that the tribal-state compact negotiated between the Plaintiff and the State of California provides only the State of California limited access to tribal casino records only to ensure that Plaintiff is in compliance with the terms of the Tribal/State Compact, and nothing more. As such, Defendants do not have the authority to assert jurisdiction over the Plaintiff's casino records in the manner in which they allege they have authority.

Pursuant to its Third Claim for Relief:

6. Compensatory damages

7. That the Court award Plaintiffs reasonable attorneys' fees, costs and expenses pursuant to 42 USC §1988

8. Such other and further relief as appears reasonable and just

Pursuant to its Fourth Claim for Relief:

9. That the Court enter judgment in favor of Plaintiffs and against Defendants temporarily, preliminarily and permanently enjoining and restraining defendants and all persons working in concert with them or under their direction and control from enforcing or attempting to enforce the laws of the State of California and or the County of Inyo on Plaintiffs as it relates to the seizure of Tribally-owned documents.

10. That the Court enter judgment in favor of Plaintiffs and against Defendants temporarily, preliminarily and permanently enjoining and restraining defendants and all persons working in concert with them or under their direction and control from destroying or refusing to return to Plaintiff all tribally-owned documents which were seized from the premises of the Plaintiff's tribal casino on or about March 23, 2000.

Pursuant to the Fifth Claim for Relief:

11. That the Court enter judgment in favor of Plaintiffs and against Defendants declaring that unless and until the California Legislature expressly assumes criminal and civil jurisdiction over incidents that occur on tribal lands between Indians and non-Indians, Public Law 280 shall have no force and effect, and that any actions taken by the Executive and Judicial Branches of the government of the State of California, pursuant to Public Law 280, shall violate the separation of powers clause, Article III, §3 of the California Constitution.

12. Alternatively, that the court enter a judgment in favor of Plaintiffs and against Defendants declaring that Public Law is in violation of the Tenth Amendment of the United States Constitution and is therefore void as it applies to the State of California until the State affirmatively assumes PL 280 jurisdiction.

Pursuant to All Claims for Relief:

13. That the Court award such other relief as may be deemed just and appropriate;

14. That Plaintiffs be awarded their costs of suit.

Dated this 4th day of August, 2000

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By:

DEMAND FOR JURY TRIAL

Plaintiffs, pursuant to Federal Rule of Civil Procedure, Rule 38(b), hereby demand a trial by jury.

Dated this 4th day of August, 2000

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. CV-F-00-6153 REC LJO

[Filed November 22, 2000]

BISHOP PAUITE TRIBE and
BISHOP PAUITE GAMING CORPORATION
d.b.a. PAUITE PALACE CASINO
Plaintiffs,

v.

COUNTY OF INYO, PHILLIP MCDOWELL, individually and in his official capacity, and DANIEL LUCAS, individually and in his official capacity,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

On October 30, 2000 the court heard defendants' Motion to Dismiss. Upon due consideration of the written and oral arguments and the record herein, the court grants the motion for the reasons set forth herein.

I. Plaintiffs' Allegations

Plaintiffs allege five claims in the Complaint. In the first claim, plaintiffs aver that some time after February 14, 2000, the Inyo County District' Attorney's office requested the Paiute Palace Casino to provide it with payroll records for three casino employees-- Patricia Dewey, Clifford Dewey and

Tinya Hill -- all members of the Bishop Paiute Tribe. Complaint, ¶¶ 17 & 19. The request related to an investigation then being undertaken by the district attorney's office into potential welfare fraud. *Id.* at ¶ 17. In response to the request, the casino informed the district attorney's office that it was Plaintiff's long standing custom, practice and policy not to provide the records unless it got written authorization to do so from the three employees. *Id.* Thereafter, on March 23, 2000, the district attorney's office obtained a search warrant for the records. *Id.* at ¶ 18. Plaintiffs further allege that the search was executed with the assistance of the Sheriff's Department for the County of Inyo, by use of force and intimidation. *Id.* at ¶ 21. Deadbolt cutters were used to cut the locks off of the storage facility where the confidential personnel records were stored. *Id.* The records allegedly were not limited to the individuals identified in the search warrant but also included the personnel records of seventy-eight other employees who were not subject to criminal investigation. *Id.*

Plaintiffs' also allege that the search warrant is unlawful because it infringed upon plaintiffs' right to remain free from state interference with their right to self-governance as proscribed by federal law. *Id.* at ¶ 28. Plaintiff contend that Public Law 280 does not permit the defendants to execute a search warrant covering casino property. *Id.* Plaintiffs seek declaratory relief against all defendants, declaring that Public Law 280 does not allow for the issuance and execution of search warrants upon casino property.

The second claim is also a request for declaratory relief. Plaintiffs allege that the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.*, preempts whatever

jurisdiction the State of California otherwise might have to directly apply and enforce California laws against plaintiffs and their officers, agents, employees, contractors and patrons in any manner within the Pauite Palace Casino. *Id.* at ¶ 29. In addition, plaintiffs allege that the Tribal-State Compact allows the state's access to the records solely to ensure the compliance of the compact. *Id.* at ¶ 30-31.

The third claim alleges a section 1983 claim. Plaintiffs aver that in obtaining and executing the search warrant, District Attorney Phillip McDowell and Sheriff Dan Lucas acted willfully, knowingly and with specific intent to deprive plaintiffs of their constitutional rights and rights under the IGRA. *Id.* at ¶ 38. Plaintiff also alleges that defendant McDowell acted consistently with the policies of the County of Inyo. Plaintiff request monetary damages and attorney's fees.

Plaintiffs' fourth claim seeks an injunction against the County, District Attorney McDowell, Sherif Lucas and their deputies and subordinates to enjoin them from obtaining additional search warrants to obtain employment records in connection with other fraud investigations. *Id.* at ¶¶ 22, and 41-42.

The fifth claim seeks declaratory relief in connection with a request for supplemental jurisdiction under 28 U.S.C. 1367(a). *Id.* at ¶ 44. Plaintiffs allege that California has no jurisdiction over Indian lands pursuant to Public Law 280 because the California Legislature has not specifically enacted legislation accepting such jurisdiction. *Id*, at ¶¶ 45-48. Alternatively, plaintiffs seek a declaratory judgment that Public Law 280 is invalid because the Tenth Amendment

precludes Congress from directing California to assume criminal jurisdiction over Indian lands. *Id.* at ¶ 52.

II. Motion to Dismiss under Fed. R. Civ. p. 12(b) (6)

A. Standard

Under Rule 12(b) (6), "dismissal for failure to state a claim is proper 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.' "*Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Rule 12(b)(6) should be read in conjunction with Rule 8 (a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure 1355-56 (1990). Moreover, a court "must accept all material allegations in the complaint as true, and construe them in the light most favorable [to the plaintiff]." *NL Industries v. Kaplan*, 792 F.2d 896 (9th Cir. 1986).

In addition, unless a Rule 12 (b)(6) motion is converted to a motion for summary judgment, "evidence outside the pleadings ... cannot normally be considered in deciding a 12(b) (6) motion." *Farr v. United States*, 990 F.2d 451, 454 (9th Cir. 1993). However, a court may consider material submitted as part of the complaint and take judicial notice of facts outside the pleadings. *Hal Roach Studios v. Richard Fiener & Co.*, 896 F.2d 1542, 1554 n.19 (9th Cir. 1990); *Mack v. South Bay Beer Distribs., Inc.* 798 F.2d 1279, 1282 (9th Cir. 1986). Furthermore, "documents whose contents are alleged in a complaint and whose authenticity no

party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (documents referred to in complaint but not attached to complaint may be considered by trial court for Rule 12(b) (6) motion); *Parrino v, FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998). Where claims in the complaint are made based on documents, the documents are no longer matters outside the pleadings but are part of the record. *Townsend v. Columbia Operations,* 667 F.2d 844, 848 (9th Cir. 1982).

B. Judicial Notice

Under Federal Rule Evidence 201(d), the court shall take judicial notice of adjudicative facts if requested by a party and supplied with the necessary information. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

In connection with its motion to dismiss, defendants req/lest judicial notice of the following: (1) the search warrant affidavit; (2) the search warrant; (3) the return to the search warrant; (4) the State of California IEVS/Integrated Fraud Detention System report; (5) the documents obtained in the search warrant; (6) the Deed to the casino execution of property; (7) the Tribal-State Compact; and (8) notice of the approval of the Compact in the Federal Register.

The documents are specifically referred to in the Complaint and its authenticity is not questioned by either parties. Moreover, the documents are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned because they are official records and documents. Thus, the court takes judicial notice of the documents.

C. Section 1983 Claim

1. County of Inyo

Defendants contend that plaintiffs' section 1983 claim[1] against the County of Inyo should be dismissed because the County is not liable for the acts of the district attorney and sheriff in the performance of their official prosecutorial, investigative and law enforcement duties.

A local government may not be sued under § 1983 for constitutional torts inflicted by its employees or agents unless a plaintiff can show that his injury was the result of the government's policy or custom. *Monell v. New York City Dep't of Social Services*, 436 U.S. 658, 694 (1978). There is no respondeat superior liability under section 1983. *Id.* at

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[1] 42 U.S.C. section 1983 provides: Every' person who, under color of any statute, ordinance, regulations, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

692. "To hold a local government liable for an official's conduct, a plaintiff must first establish that the official (1) had final policymaking authority 'concerning the action alleged to have caused the particular constitutional or statutory violation at issue' and (2) was the policymaker for the local governing body for the purposes of the particular act." *Weiner v. San Diego County*, 210 F.3d 1025, 1028 (9th Cir. 2000) (quoting *McMillian v. Monroe County, Alabama,* 520 U.S. 781, 785 (1997)). The court's determination of whether the official is acting for the state or the county is dependent on an analysis of state law based on the state's constitution, statutes and case law. *McMillian*, 520 U.S. at 785, 787-93.

Under the California Constitution, both the sheriff and the district attorney have dual roles as agents for the state and the county. Article XI, section l(b) states that "the Legislature shall provide ... an elected county sheriff, an elected district attorney " Article XI, section 4 establishes county charters that provide for an elected sheriff and an elected district attorney ... their election or appointment, compensation, terms and removal." Article IV, section 13 allows the Attorney General to have "direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as the Attorney General may seem advisable."

Likewise, under California statutory law, the sheriff and district attorney have dual functions as both state and county officials. There are some provisions that suggest that

the sheriff and district attorney are county officers. Cal. Gov. Code § 24000 states that both the sheriff and district attorney are county officers. In addition, counties set the salaries of the sheriff and district attorney under Cal. Gov. Code § 25300. Also, the sheriff and district attorney must be registered to vote in their respective counties pursuant to Cal. Gov. Code § 24001. Moreover, under Cal. Gov. Code § 3060, the sheriff and the district attorney can be removed from office following the accusation of the county grand jury. Finally, Cal. Gov. Code § 25303 allows the county to supervise the sheriff and district attorney's conduct and use of public funds. However, there are other provisions that indicate that the sheriff and district attorney are state officers. Cal. Gov. Code § 25303 provides that county supervision "shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney." In addition, Cal. Gov. Code §§ 12550 and 12560 provide the Attorney General direct supervision over the sheriffs and district attorneys and may require of them written reports concerning the investigation, detection and punishment of crimes in their respective jurisdictions. Moreover, under Cal. Gov. Code § 12560, the Attorney General can direct the activities of any sheriff relative to the investigation or detection of crime within the Jurisdiction of the sheriff, and he may direct the service of subpoenas, warrants of arrest, or other processes of court. Also, the Attorney General can call into conference the sheriffs and district attorneys for the purpose of discussing the duties of their office, with the view of uniform and adequate enforcement of state law under Cal. Gov. Code § 12524.

With respect to case law, the Ninth Circuit has stated that the federal court must consider California state law to

give due respect to decisions by the California Supreme Court as the ultimate interpreter of California state law. *Weiner v. San Diego County*, 210 F.3d 1025, 1030 (9th Cir 2000) Moreover the court stated that "[a]ll relevant California cases, including *Pitts*, have held that district attorneys are state officers for the purpose of investigating and proceeding with criminal investigations." *Id.*

In *Pitts v. County of Kern,* 17 Cal.4th 340, 362 (1998), the California Supreme Court after a *McMillian* analysis, concluded that the district attorney represented the state when preparing to prosecute and when prosecuting criminal violations of state law. Likewise, in *Weiner*, the Ninth Circuit found that the district attorney was a state officer when deciding whether to prosecute an individual. *Weiner*, 210 F.3d at 1031.

With respect to whether the sheriff acts as a county or state officer, the state and federal courts have reached differing conclusions. The court in County of *Los Angeles v. Superior Court (Peters)*, 68 Cal. App.4th 1166, 1178 (1998), concluded that in setting policies concerning the release of persons from the county jail, the sheriff acted as a state officer performing state law enforcement duties, and not as a policymaker on behalf of the county. Moreover, two district courts have hell that the sheriff acts as a state official when providing security for the superior court. *Hawkins v. Comparet-Cassani,* 33 F. Supp.2d 1244, 1253 (C.D. Cal. 1999); *Boakye-Yiadom v. County of San Francisco*, 1999 WL 638260, at * 3 (N.D. Cal. August 18, 1999). In addition, one district court found that the Sheriff is a state official when acting as a jailer. *Smith v. County of San Mateo*, 1999 WL 672318, at *7 (N.D. Cal. Aug. 20, 1999). However, another

district court held the opposite, concluding that the sheriff acted on behalf of the county when he operated the county jail and made policy concerning the treatment of inmates and arrestees in need of medical attention. *Leon v. County of San Diego*, 2000 WIL 1476330, at *5 (S.D. Cal. Sept. 9, 2000). In addition, a district court has held that the sheriff is a county official when he encourages mistreatment of female crime victims or does not adequately prepare his staff to deal with female spousal abuse victims. *Roe v. County of Lake*, 107 F. Supp.2d 1146, 1152 (N.D. Cal 2000).

In the present case plaintiffs allege that the County is liable because the sheriff and the district attorney executed the search warrant in their investigative capacities as county officials, However, based on statutory law and case law, the court concludes that the sheriff and the district attorney acted as state officials when the district attorney requested the search warrant from the superior court and the sheriff executed the search warrant. First, under Article IV, section 13, the Attorney General has direct supervision over every district attorney and sheriff and may require them to make reports concerning the investigation, detection, prosecution, and punishment of crime in their, respective jurisdictions as the Attorney General may seem advisable. This language is reflected in Cal. Gov Code § 12550 and 12560. Second, under § 12560, the Attorney General can direct the activities of any sheriff relative to the investigation or detection of crime within the jurisdiction of the sheriff, and he may direct the service of subpoenas, warrants of arrest, or other processes of court. Also the attorney General can call into conference the district attorneys and sheriffs for the purpose of discussing the duties of their office, with the view of uniform and adequate enforcement of state law under Cal.

Gov. Code § 12524. Third, when the sheriff and or his deputies execute the search warrant, they act at the bequest of the superior court, which issued the search warrant Unlike *Roe*, which dealt with the sheriff departments treatment of women victims, and *Leon*, which addressed the medical treatment of arrestees, the present case deals with the execution of a facially valid search warrant ordered by the superior judge, a state official. Here, the situation is more similar to *Hawkins* and *Boakye-Yiadom*, where the courts held that the sheriff acted as a state official when he provided security for the superior court. Finally, the district attorney and sheriff were conducting an investigation into the alleged violations of state felonies involving welfare fraud when they executed the search warrant. Notwithstanding the fact that the County is responsible for the investigation of applications for Aid to Families with Dependent Children (ADFC) under Cal. Wel. & Inst. Code § 18491 and the administration of AFDC programs pursuant to Cal. Wel. & Inst. Code § 18470, the court finds that the search warrant was obtained and executed in furtherance of state law to prevent welfare fraud.

2. District Attorney

Neither states nor state officials acting in their official capacities are "persons" within the meaning of section 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). "[A] suit against a state official in his or her official is not a suit against the official but rather is a suit against the official's office." *Id.* Personal capacity suits seek to impose personal liability upon a government official for the actions that he takes under color of state law. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). "official capacity suits, in contrast,

'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" *Id.* (citation omitted).

The court finds that the district attorney acted in his official capacity as a state official when the district attorney's office obtained a search warrant in connection with the welfare fraud investigation. Thus, the district attorney is not liable in his official capacity because he is not a person for purposes of section 1983 liability.

With respect to the personal capacity suit, defendant McDowell argues that he has absolute and qualified immunity.

The prosecutor is afforded absolute immunity from a civil suit for damages under § 1983 when initiating a prosecution and presenting the State's case. *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) An absolute immunity defeats the suit at the outset provided that the official's actions were within the scope of the immunity. *Id.* at 419 n.13. The Supreme Court declined to consider whether absolute immunity applied to aspects of the prosecutor's responsibilities that cast him in the role of an administrator or investigative officer rather than that of advocate. *Id.* at 430-31. In particular, the Court left standing *Pierson v. Ray*, 386 U.S. 547, 557 (1967) which held that a prosecutor engaged in certain investigative activities enjoys, not the absolute immunity associated with the judicial process, but only a good-faith defense comparable to a police officer's defense. *Id.* at 430.

In the present case, the district attorney's office filed for the search warrant during an investigation into welfare

fraud. Thus, the district attorney is not afforded absolute immunity but has qualified immunity.

Government officers performing discretionary functions may exert a qualified immunity in so far as their conduct does not violate clearly established statutory or constitutional rights that would have been known to a reasonable person. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment." *Horlow*, 457 U.S. at 818. The judge may appropriately consider whether the law was clearly established at the time the action occurred. *Id.*

Here, plaintiffs allege that District Attorney McDowell was put on inquiry notice that his acts where illegal based on the California's policy with respect to tribal sovereignty. Plaintiffs point to the preamble to the Compact as evidence of the stare's policy of fostering tribal-state cooperation. In addition, plaintiffs argue that Cal. Fish & Game Code § 1600-1610 authorizes the Department of Fish & Ga/ne to execute agreements on behalf of the State and other Native American tribes; thus, there is tribal-state cooperation with respect to jurisdictional disputes. Finally, the California Legislature recently passed Assembly Concurrent Resolution No. 185, which:

> reaffirms state recognition of the sovereign status of federally recognized Indian tribes as separate and independent political communities within the United States, and encouraging all state agencies, when engaging in activities or developing policies affecting Native American tribal rights or trust resources, to do so in a knowledgeable, sensitive manner that is respectful of tribal sovereignty, and encourage all state agencies to continue to reevaluat, and improve the implementation of laws affecting the Native American tribal rights.

In addition, plaintiffs argue that the search warrant was invalid because it failed to inform the superior court that there was no jurisdiction to execute the search warrant and the seized records of seventy-eight other tribal employees went beyond the scope of the search warrant.

A fraud investigation that required the search and seizure of payroll records does not violate California policy even in light of the State's recent expression of respect and recognition for tribal sovereignty. California's policy does not conflict with Public Law 280, which allows the state and thus the district attorney to impose California criminal law on tribal lands. Moreover, the district attorney's alleged failure in informing the court of possible jurisdictional problems is not troubling because the magistrate should have considered this when he issued the search warrant. Thus, the court concludes that the district attorney has qualified immunity because his conduct did not violate any clearly established statutory or constitutional rights.

3. Sheriff

The sheriff was acting as a state officer when his department executed the warrant. As such, he is not liable under section 1983 in his official capacity. With respect to the individual capacity suit, the sheriff has qualified immunity because his department merely executed a facially valid search warrant signed by the magistrate. Having reviewed the payroll records that were seized during the execution of the warrant, the court finds that the execution of the search warrant was within the warrant's Scope because each page contained at least one reference to the employees that were under investigation.

D. Public Law 280 and Sovereign Immunity

Plaintiffs contend that their sovereign immunity precluded the issuance of the search warrant. They contend that Public Law 280 does not provide the defendants with authority to search and seize the payroll records even where there is probable cause under the Fourth Amendment. Defendants assert that they are entitled to obtain and execute the search warrant pursuant to Public Law 280.

Public Law 280 grants certain states criminal jurisdiction over Indians who commit or are victims of crimes on reservations. Section 18 U.S.C. § 1162 provides in pertinent part:

> Each of the States . . . listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country to the same extent that such

> State . . . has jurisdiction over offenses committed elsewhere within the State. . .and the criminal laws Of such State . . .shall have the same force and effect within such Indian country as they have elsewhere within the State. . . :
> California. . . all Indian country within the State.

The Supreme Court explained that "the primary concern of Congress in enacting Pub. L. 280 that emerges from its sparse legislative history was the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." *Bryan v. Itasca County,* 426 U.S. 373, 379 (1976). In determining whether a state has Public Law 280 jurisdiction, the court must look to the intent of the state law. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209(1987). If the intent of the state law is generally to prohibit certain conduct, the conduct falls within Public law 280's grant of criminal jurisdiction as criminal/prohibitory; but, if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Public Law 280 does not authorize its enforcement on an Indian reservation. *Id.*

Here, California has criminal jurisdiction over Native Americans oh tribal lands under Public Law 280 because the laws that the district attorney and sheriff sought to enforce are criminal/prohibitory laws rather than regulations. The more difficult question is whether the state has jurisdiction over the tribe itself.

In *Bryan v. Itasca County*, the Supreme Court indicated that Public Law 280 did not explicitly confer state jurisdiction over tribes. The court stated,

> [N]othing in [Public Law 280]'s legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to the States should result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes, into little more than "private, voluntary organizations" - a possible result if tribal governments and reservation Indians were subordinated to the full panoply of civil regulatory powers, including taxation, of state and local governments. The Act itself refutes such an inference: there is notably absent any conferral of state jurisdiction over the tribes themselves, and § 4(c), 28 U.S.C. § 1360(c), providing for the "full force and effect" of any tribal ordinances or customs "heretofore or hereafter adopted by an Indian tribe . . .if not inconsistent with any applicable civil law of the State" contemplates the continuing vitality of tribal government.

Bryan v. Itasca County, 426 U.S. at 388 (citations omitted). However, the discussion of Public Law 280 was in connection with the Court's review of 28 U.S.C. § 1360, which grants limited civil jurisdiction to the states. Moreover, the Supreme Court has refused to apply a per se rule that would exclude state jurisdiction over tribes and tribal members in the absence

of express congressional consent. *Cabazon Bond of Mission Indians*, 480 U.S. at 214-15.

In *United States v. James*, 980 F.2d 1314, 1319 (9th Cir. 1992), the Native American defendant was accused of raping another Native American. He requested documents relating to the victim's alleged alcohol and drug problems that were in the possession of a tribe's Department of Social and Health Services. *Id.* The district court quashed the subpoena to the Quinault Indian Nation based upon sovereign immunity. On appeal, the Ninth Circuit affirmed. The court stated,

> By making individual Indians subject to federal prosecution for certain crimes, Congress did not address implicitly, much less explicitly, the amenability of the tribes to the processes of the court in which the prosecution is waived. . . The fact that Congress grants jurisdiction to hear a claim does not suffice to show Congress has abrogated all defenses to that claim.

Id. at 1319. The court concluded that the Quinault Tribe possessed tribal immunity at the time the subpoena was served. *Id.* Moreover, !the court found that the Quinault Indian Nation did not explicitly waive its sovereign immunity in the Social and Health Services documents when it voluntarily gave different documents relating to the victim that were located in the Housing Authority files. *Id.* at 120.

The plaintiffs seek to analogize *United States v. James* to the present case. Plaintiffs argue that if the Ninth Circuit finds no authority for the federal court to obtain tribal records by issuance of a subpoena, then the State and its political

subdivisions should have no greater authority to seize payroll documents pursuant to a search warrant. However, the present case is distinguishable from *James*. In *James*, the tribe was a third party and was not directly involved in the criminal prosecution. The tribe asserted sovereign immunity to protect the Native American victim and to foster confidence in the tribe's Social and Health Services. In the present case, plaintiffs' claim of sovereign immunity advances the tribe's right to self-governance, but does so, at the expense of the state's interest in preventing welfare fraud. In the interest of a fair and uniform application of California's criminal law, state officials should be able to execute search warrant against the tribe and tribal property. Thus, the court finds that the tribe's sovereign immunity does not prohibit the execution of the search warrant against the tribe and its property.

E. Indian Gaming Regulatory Act

The plaintiffs argue that the IGRA eviscerated any jurisdiction that Defendants asserted prior to the passage of IGRA. In addition, the plaintiffs argue that there was no compact in place at the time of the unlawful search of the Tribe's gaming facility.

The IGRA provides that "[t]he United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country" in the absence of a compact providing for state jurisdiction. 18 U.S.C. § 1166(d). "If that exclusivity is incompatible with any provision of Public Law 280, then the Public Law 280 provision20 has been impliedly repealed by section 1166(d)." *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 540 (9th Cir. 1994).

As the Eight Circuit explained, "Examination of the text and structure of IGRA, its legislative history, and its jurisdictional framework likewise indicates that Congress intended it to completely preempt state law." *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 544 (8th Cir. 1996).

Here, the investigation and the execution of the search warrant involves welfare fraud, not gaming regulation by the state. The fact that the search warrant was executed at a gaming facility is unimportant. Because the investigation and search warrant deal with a state felony rather than whether a casino game is illegal under state law, there is no IGRA preemption. Although both parties mention the Compact in their analysis of whether there is IGRA preemption of Public Law 280, the court does not address the Compact because it concludes that IGRA does not preempt Public Law 280.

F. Constitutionality of Public Law 280

Plaintiffs contend that the California Legislature must affirmatively adopt Public Law 280 before the executive branch may impose criminal jurisdiction. Plaintiffs argue that the executive branch may not assume the fundamental act of establishing policy or be delegated the act of establishing policy by the legislature. As plaintiffs acknowledge, the one case addressing this issue under California law directly contradicts plaintiffs' argument.

In *People v. Miranda*, 106 Cal. App.3d 504, 505 (1980), the Native American defendant was charged with arson committed on Indian land. The trial court held that the California courts did not have jurisdiction. *Id.* The appeals court reversed. *Id.* The court stated that "it was not required

that California enact some form of enabling legislation to assume jurisdiction before the terms of 18 U.S.C. 1162 became effective in this state." The Tenth Circuit, analyzing Colorado law agreed, stating:

> A direct congressional grant of jurisdiction over Indian country does not require any further action to vest the state, with jurisdiction unless such state law itself prevents the state from exercising such jurisdiction. Upon cessation of such jurisdiction to a state, federal law no longer preempts the state's exercise of its inherent police power over all persons within its borders, and the state is automatically vested with jurisdiction in the absence of state law to the contrary.

The plaintiffs distinguish *Burch* from the present case by arguing that *Burch* involved Colorado law, not California law. According to plaintiffs, Colorado is different from California because it was a voluntary state that became a mandatory state in 1984 while California was one of the five mandatory states when Public Law 280 was enacted. Because Colorado only later became a mandatory state, the *Burch* court only addressed preemption. Plaintiffs argue that the analysis for California law is different from Burch because California's Tenth Amendment was and continues to be violated by Public Law 280. Plaintiffs' attempt to distinguish the holding of *Miranda* from the present case is unpersuasive because there is no Tenth Amendment violation as the court will address shortly. Since there are no cases to the contrary after fifty years, the court concludes that Public Law 280 is

enforceable by the executive branch without need of an enabling act.

Finally, plaintiffs argue that Public Law 280 violates the Tenth Amendment. They contend, that Public Law 280 improperly imposes upon California, the burden of implementing the federal government's scheme to meet the federal government's obligation to ensure law and order on Indian lands.

The court agrees with the defendants that there is no implementation of a federal government scheme here. There is no attempt by congress to mandate that the state assist in the enforcement of a federal statutory scheme such as in *Printz v. United States*, 521 U.S. 898 (1997) or to require the state legislature enact one of three laws proposed by the federal government as in *New York v. United States*, 505 U.S. 144, 162 (1992). Rather, Public Law 280 allows California to impose its own state criminal law. Here, Congress is simply allowing California to exert its police power over the Indian lands within its boundaries. Thus, the court finds that Congress did not violate the, Tenth Amendment in passing Public Law 280.

ACCORDINGLY, IT IS SO ORDERED that Defendants' Motion to Dismiss be granted.

Dated: November 22, 2000.

/s/ _____
ROBERT E. COYLE
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed January 4, 2002]

No. 01-15007

BISHOP PAIUTE TRIBE, in its official capacity and as a representative of its Tribal members; BISHOP PAIUTE GAMING CORPORATION, d.b.a. the PAIUTE PALACE CASINO,
Plaintiffs-Appellants,

v.

COUNTY OF INYO; PHILLIP MCDOWELL, individually and in his official capacity as District Attorney of the County of Inyo; DANIEL LUCAS, individually and in his official capacity as Sheriff of the County of Inyo,
Defendants-Appellees.

OPINION

[The full text of this item is located in the Petition Appendix at pages 9a-43a. Rule 26.1]

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-15007

[Filed May 20, 2002]

BISHOP PAIUTE TRIBE, in its official capacity and as a representative of its Tribal members; Bishop Paiute Gaming Corporation, d.b.a. the Paiute Palace Casino,

Plaintiffs-Appellants,

v.

COUNTY OF INYO; Phillip McDowell, individually and in his official capacity as District Attorney of the County of Inyo; Daniel Lucas, individually and in his official capacity as Sheriff of the County of Inyo,

Defendants-Appellees.

Before: PREGERSON and RAWLINSON, Circuit Judges, and WEINER,[1] District Judge.

[1] Honorable Charles R. Weiner, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

ORDER AMENDING OPINION AND DENYING THE PETITION FOR REHEARING AND THE SUGGESTION FOR REHEARING EN BANC

[The full text of this item is located in the Petition Appendix at pages 9a-43a. Rule 26.1]

United States Court of Appeals
Ninth Circuit

No. 01-15007

[Filed January 4, 2002]

BISHOP PAIUTE TRIBE, in its official capacity and as a representative of its Tribal members; Bishop Paiute Gaming Corporation, d.b.a. the Paiute Palace Casino, Plaintiffs-Appellants,	)
v.	)
COUNTY OF INYO; Phillip McDowell, individually and in his official capacity as District Attorney of the County of Inyo; Daniel Lucas, individually and in his official capacity as Sheriff of the County of Inyo, Defendants-Appellees.	)

As Amended on Denial of Rehearing and Suggestion for Rehearing En Banc May 20, 2002

Appeal from the United States District Court for the Eastern District of California. Robert E. Coyle, Senior District Judge, Presiding. D.C. No. CV-00- 6153-REC/LJO.

JUDGES:
Before PREGERSON and RAWLINSON, Circuit Judges, and WEINER,* District Judge.

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* The Honorable Charles R. Weiner, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

AMENDED OPINION

PREGERSON, Circuit Judge:

On March 23, 2000, the District Attorney for the County of Inyo ("District Attorney") and the Sheriff for the County of Inyo ("Sheriff") obtained and executed a warrant to search Bishop Paiute Gaming Corporation ("Corporation") employee records held in the possession and control of the Bishop Paiute Tribe ("Tribe") in Bishop, California, as part of a welfare fraud investigation. The Tribe and the Corporation brought suit against the County of Inyo ("County"), the District Attorney, and the Sheriff (collectively "Defendants") under federal and state law seeking injunctive and declaratory relief, and damages under 42 U.S.C. § 1983.

The District Court granted Defendants' motion to dismiss on each of the Plaintiffs' claims. On appeal, the Tribe raises several arguments concerning the authority of the County to obtain and execute a search warrant against the Tribe. First, the Tribe argues that Public Law 280--which grants California criminal jurisdiction over offenses committed by or against Indians--does not waive the Tribe's sovereign immunity, and thus the County exceeded its jurisdiction when it obtained and executed a search warrant against the Tribe. The Tribe also argues that the Indian Gaming and Regulatory Act preempts any jurisdiction the State of California might have to apply and enforce California's laws against the Tribe. Further, the Tribe argues that California has no jurisdiction over Indian lands pursuant to Public Law 280 because the California legislature has not specifically enacted legislation accepting such jurisdiction. Finally, the Tribe asserts that Public Law 280 is invalid because the Tenth Amendment precludes Congress from

directing California to assume criminal jurisdiction over Indian lands.

The Tribe also seeks damages under 42 U.S.C. § 1983 on the ground that the County and its agents violated the constitutional and civil rights of the Tribe when the District Attorney and Sheriff knowingly obtained and executed a search warrant in excess of their jurisdiction.

We find that the County and its agents violated the Tribe's sovereign immunity when they obtained and executed a search warrant against the Tribe and tribal property. We also find that the county District Attorney and Sheriff acted as county officers when they obtained and executed a search warrant over tribal property, thus subjecting the County to liability under 42 U.S.C. § 1983. Finally, we find that neither the District Attorney nor the Sheriff is entitled to qualified immunity because they violated clearly established law by executing a warrant outside of their jurisdiction. With respect to these conclusions, we reverse the District Court. With respect to the Tribe's remaining arguments concerning the County's authority to obtain and execute a warrant against the Tribe, we affirm the District Court.

A.

The Bishop Paiute Tribe ("Tribe") is a federally recognized tribe located on the Bishop Paiute Reservation in Bishop, California. The Bishop Paiute Gaming Corporation ("Corporation") is a tribally-chartered corporation wholly owned by the Tribe. The Corporation's sole purpose is to operate and manage Class II and Class III gaming, pursuant to a Tribal-State Compact, and under the legal authority of the

Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* The gaming facility is known as the Paiute Palace Casino ("Casino").

Shortly after February 14, 2000, personnel for the Casino received a request from the County of Inyo District Attorney's Office for records of three tribal member Casino employees. The stated purpose for the records was the County's investigation into alleged welfare fraud. On February 28, 2000, the Tribe's attorney informed the District Attorney that it was the Tribe's long-standing policy that the information requested would not be released unless the Tribe was authorized to do so in writing by the employees whose records were sought.

On March 22, 2000, Leslie Nixon, a peace officer with the District Attorney's Office, executed an affidavit in support of the issuance of a search warrant. The affidavit stated that she had reasonable and probable cause for believing that the employees' records would demonstrate that the three individuals had committed welfare fraud by receiving public assistance while employed. The affidavit stated that the three individuals had received such public assistance through the Inyo County Department of Health and Human Services during the period of April 1998 through June 1998.

Based on this affidavit, the Inyo County Superior Court issued a search warrant on March 23, 2000 authorizing a search of the Casino for the limited purpose of obtaining payroll records for the three tribal member Casino employees. The search warrant was executed that same day by the District Attorney for the County of Inyo, Phillip McDowell ("District

Attorney"), and Sheriff for the County of Inyo, Daniel Lucas ("Sheriff"). Deadbolt cutters were used to cut locks off secured facilities containing confidential personnel records.

The District Attorney and Sheriff seized two types of payroll records: the first consisted of time card entries, payroll registers, and payroll check registers; the second consisted of quarterly payroll tax information which the Tribe had earlier submitted to the State of California in its California State Quarterly Wage and Withholding Reports.

Despite the limited scope of the search warrant, the documents seized contained confidential information concerning seventy-eight other tribal member Casino employees who were not the subject of the warrant, in addition to information concerning the named three individuals. The District Attorney and the Sheriff failed to give the Tribe an opportunity to redact from the seized records this information not specified or identified by the terms and conditions of the search warrant. Additionally, at the time of the search, the Tribe asserted that the state court did not have jurisdiction to enforce a warrant against a sovereign tribe.

Subsequent to July 13, 2000, the Tribe's attorney received correspondence from the District Attorney indicating that the County wished to obtain personnel records for six additional tribal member Casino employees for the period of July 1999 through July 2000. The Tribe's attorney informed the District Attorney that the Tribe would be willing to accept, as evidence of the employees' consent to release the information requested, a redacted copy of the last page of the signed county welfare application which indicated that the

employment records of individuals applying for public assistance were subject to review by county officials. This offer was refused by the District Attorney.

The Tribe filed its complaint on August 4, 2000, seeking injunctive and declaratory relief and damages under 42 U.S.C. § 1983. On November 22, 2000, the District Court for the Eastern District of California granted Defendants' motion to dismiss. The District Court reached its decision on the grounds that: (1) the Tribe's sovereign immunity did not prohibit execution of the search warrant against the Tribe; (2) IGRA, which concerns gaming activities, does not preempt Public Law 280; (3) California was not required to enact enabling legislation before Public Law 280 became effective; (4) Public Law 280 does not violate the Tenth Amendment of the U.S. Constitution; (5) the District Attorney and Sheriff acted as state officers and thus the County is not liable for their conduct; and, (6) the District Attorney and Sheriff are entitled to qualified immunity and thus not liable in their personal capacities.

For the following reasons, we reverse the District Court order as to its conclusion that the Tribe's sovereign immunity was not violated by the issuance and execution of the warrant, and as to the District Court's conclusion that the Tribe was not entitled to damages under 42 U.S.C. § 1983. As to the other conclusions reached by the District Court, we affirm.

B.

I. STANDARD OF REVIEW.

[1][2][3] The Tribe challenges the District Court Order granting Defendants' Motion to Dismiss pursuant to Federal Rule 12(b)(6). We review the District Court's dismissal for failure to state a claim de novo. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir.1998) (noting that "a complaint should not be dismissed unless it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief"). We review the issue of whether a tribe has sovereign immunity de novo. *Burlington N. R.Co. v. Blackfeet Tribe*, 924 F.2d 899, 901(9th Cir.1991). On review of a denial of a motion to dismiss based on qualified immunity, we have jurisdiction only to decide if defendant's conduct violated clearly established constitutional rights. *Pelletier v. Federal Home Loan Bank*, 968 F.2d 865, 871-72 (9th Cir.1992).

II. THE SOVEREIGN GOVERNMENTAL STATUS OF THE TRIBE PREVENTS THE EXECUTION OF THE SEARCH WARRANT AGAINST THE TRIBE.

A. *Public Law 280 Did Not Waive the Tribe's Sovereign Immunity.*

This case requires this court to reconcile the plenary power of the States over residents within their borders with the semi autonomous status of Indians living on tribal reservations. More particularly, we are asked to determine whether Public Law 280, 18 U.S.C. § 1162(a)--which granted

several states criminal jurisdiction and limited civil jurisdiction over reservation Indians--can be read to infringe upon the sovereignty of Indian nations. An analysis of the jurisdictional reach of Public Law 280 necessarily must be taken against the backdrop of the Indian sovereignty doctrine. *See Moe v. Salish & Kootenai Tribes,* 425 U.S. 463, 475, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976).

[4] The Supreme Court's jurisprudence regarding Indian sovereignty is governed by the "policy of leaving Indians free from state jurisdiction and control...." *Rice v. Olson,* 324 U.S. 786, 789, 65 S.Ct. 989, 89 L.Ed. 1367 (1945). The Supreme Court has viewed tribal sovereign immunity as a considerable shield against intrusions of state law into Indian country. *See, e.g., Williams v. Lee,* 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959); *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973).

[5] Public Law 280 was adopted by Congress in response to the concern over the lawlessness on Indian reservations. *See Bryan v. Itasca County,* 426 U.S. 373, 379, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976) (citing Carole Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians,* 22 UCLA L. Rev. 535, 541-42 (1975)). As such, the statute was designed to address the conduct of individuals rather than abrogate the authority of Indian governments over their reservations. Section 2 of the statute grants six states, including California, criminal jurisdiction over offenses

committed by or against Indians on the reservations.[1] Notably, the statute makes no mention of jurisdiction over Indian tribes.

[6] The denial of state jurisdiction over tribes is also consistent with the Supreme Court's canons of construction for Indian law cases. In interpreting the scope of Public Law 280, the Supreme Court has been "guided by that eminently sound and vital canon ... that statutes passed for the benefit of dependent Indian tribes ... are to be liberally construed, doubtful expressions being resolved in favor of the Indians." *Bryan,* 426 U.S. at 391, 392 (citations omitted). Thus, any statutory ambiguity as to whether the State can enforce a warrant against the Tribe should be read to protect Indian sovereignty.

[7][8][9] Reading the plain language of the statute and applying long-established canons of construction relevant to Indian law cases, the United States Supreme Court and the Ninth Circuit have interpreted Public Law 280 to extend jurisdiction to individual Indians and not to Indian tribes. *See Id.* at 389, 96 S.Ct. 2102 (interpreting Public Law 280 and observing that "there is notably absent any conferral of state jurisdiction over the tribes themselves ..."); *California v. Quechan Tribe of Indians,* 595 F.2d 1153, 1156 (9th

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[1] Section 2(a), codified at 18 U.S.C. 1162(a) provides: "(a) Each of the States ... shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country ... to the same extent that such State ... has jurisdiction over offenses committed elsewhere within the State ..., and the criminal laws of such State ... shall have the same force and effect within such Indian country as they have elsewhere within the State...."

Cir.1979) (stating that "[n]either the express terms of [Public Law 280], nor the Congressional history of the statute, reveal any intention by Congress for it to serve as a waiver of a Tribe's sovereign immunity"). Absent a waiver of sovereign immunity, tribes are immune from processes of the court.[2]

Nevertheless, Defendants argue that in light of Supreme Court decisions that have described an inherent limitation on tribal sovereignty, Public Law 280 must be read to grant jurisdiction to the states to execute a search warrant over the Tribe. *See, e.g., United States v. Wheeler,* 435 U.S. 313, 323, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978) (holding that an Indian tribe retains jurisdiction to punish one of its members unless withdrawn by treaty, statute or implication as a necessary result of their dependent status); *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191, 211-12, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978) (holding that an Indian tribe's exercise of criminal jurisdiction over non-Indians is inconsistent with the domestic-dependent status of the tribes and that tribes may not assume such jurisdiction without congressional authorization). Defendants assert that because tribes are no longer possessed with the full attributes of a sovereign, it would be inconsistent with their dependent status

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[2] The District Court wrongly found that *Bryan* was inapplicable authority on the ground that the case concerned Public Law 280's grant of civil jurisdiction as opposed to criminal jurisdiction. Because the provisions granting criminal and civil jurisdiction are identical, cases interpreting Public Law 280's provision granting civil jurisdiction are instructive for interpreting Public Law 280's provision granting criminal jurisdiction. Thus, both *Bryan* and *Quechan Tribe* provide precedential authority that Public Law 280 does not diminish tribal sovereignty.

to bar the state from executing a search warrant against tribal property.

However, all the cases relied upon by Defendants involve instances where a tribe's sovereignty has been limited after it attempted to exert jurisdiction over non-member Indians or in cases involving attempted exertion of jurisdiction over non-tribal lands. This case involves the Tribe's assertion of jurisdiction over uniquely tribal property (Casino employee records) on tribal land. Thus, Defendants' assertion that the Tribe's inherent sovereignty has been lost by implication is not supported by law.

In sum, in enacting Public Law 280, Congress neither waived the sovereignty of the tribes, nor granted state jurisdiction over Indian tribes. Accordingly, we hold that Public Law 280 did not confer state jurisdiction over the Tribe.

B. *Execution of a Warrant Against the Tribe Violates Tribal Immunity.*

[10] Defendants argue that the execution of a warrant against the Tribe does not offend their status as a sovereign entity. The Tribe responds that their right to develop and enforce their internal tribal policies should be protected.

The Tribe established reasonable policies concerning the confidentiality of employee records, which in many instances were based on federal and state guidelines. The Tribe asserts that such policies are necessary to encourage truthfulness and accuracy in Casino employee records. As one of the only means by which the Tribe can generate

income and be self-sufficient, management of the Casino is uniquely part of the Tribe's government and infrastructure. Indeed, all governments create policies and procedures for the protection of their records. *See, e.g.*, Freedom of Information Act, 5 U.S.C. § 552 *et seq.;* California Public Records Act, Cal. Gov't Code § 6250. Undoubtedly, California's sovereign immunity would be compromised if the United States demanded that the State follow procedures other than those adopted by the state policymakers. Moreover, at issue is not just the Tribe's right to protect the confidentiality of its employee records, but the more fundamental right of the Tribe not to have its policies undermined by the states and their political subdivisions. *See New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 334, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983) (noting that "the tribes and the Federal Government are firmly committed to the goal of promoting tribal self- government ..."). We conclude that the execution of a search warrant against the Tribe interferes with "the right of reservation Indians to make their own laws and be ruled by them." *Williams,* 358 U.S. at 220, 79 S.Ct. 269.

Defendants characterize the execution of the warrant against the Tribe as a "customary inconvenience" that would accompany the service on any business. However, this Circuit has held that a subpoena issued against a tribe is different and cannot be enforced because of tribal immunity. *See United States v. James,* 980 F.2d 1314 (9th Cir.1992). In *James,* the Indian defendant was prosecuted by the federal government for the crime of rape against another Indian pursuant to the grant of federal jurisdiction through the Indian Major Crimes Act, 18 U.S.C. § 1153. The defendant appealed his criminal conviction in part on the ground that the federal district court erred in quashing a subpoena that ordered the Quinault Tribe

to release documents in its possession relating to the victim's alcohol and drug problem. *Id.* at 1319. In affirming the district court's order to quash the subpoena, the court noted that "Congress did not address implicitly, much less explicitly, the amenability of the tribes to the processes of the court in which the prosecution is commenced" when it granted federal criminal jurisdiction over individual Indians for certain crimes pursuant to 18 U.S.C. § 1153. *Id.* at 1319. The court held that the Tribe was possessed of tribal immunity and thus the federal court lacked the jurisdiction to enforce a subpoena against an unwilling sovereign even though the federal government had jurisdiction to enforce federal criminal laws against individual Indians. *Id.* at 1319.

The ruling in *James* is directly relevant to our review of this case. The *James* Court correctly focused on the status of Indian tribes as sovereigns and denied the federal government the authority to compel disclosure of tribal documents. That the federal government may not pierce the sovereignty of Indian tribes, notwithstanding its constitutionally preemptive authority over Indian affairs, *see* U.S. Const. art. I, § 8, carries considerable weight in our review of this case.

The District Court distinguished *James* on two grounds, neither of which justifies its decision not to follow Circuit precedent. First, the District Court noted without further discussion that the tribe in *James* was a third party and not directly involved in the criminal proceeding. However, the District Court does not explain why the Tribe's status as Plaintiff in this case affords it any less protection against government intrusion of its sovereignty than was afforded the Quinault Tribe in *James*. In both *James* and the case at issue

here the tribes were in sole possession of confidential documents that the state or federal government claimed to need for effective prosecution of tribal members. In neither case was the tribe the subject of prosecution. Moreover, both tribes refused to disclose their documents because to do so would violate tribal policies.

[11] Second, the District Court balanced the interests at stake in *James,* compared them to those in the case at issue, and determined that the Bishop Paiute Tribe's interests were less compelling. However, the District Court offered no authority for the application of a balancing test in the present circumstances. By contrast, the Supreme Court has adopted a more categorical approach denying state jurisdiction where states attempt to assert such jurisdiction over a tribe absent a waiver by the tribe or a clear grant of authority by Congress. *See Oklahoma Tax Comm'n v. Chickasaw Nation,* 515 U.S. 450, 458, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995) (citing *Bryan,* 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710). Though the rule is not a *per se* rule, *see California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 214 215, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987), cases applying a balancing test have involved state assertions of authority over non-members on reservations and in exceptional circumstances over the on-reservation activities of tribal members, *see, e.g., Mescalero Apache Tribe,* 462 U.S. at 331-332, 103 S.Ct. 2378; *Confederated Salish & Kootenai Tribes,* 425 U.S. at 480, 96 S.Ct. 1634. Because Defendants attempted to assert jurisdiction over the Tribe, and not over individual tribal members or non-members on tribal land, the District Court erroneously applied a balancing test.

[12] However, even if a balancing test is the appropriate legal framework, the balance of interests favors a ruling for the Tribe. In *James,* the Quinault Tribe asserted sovereign immunity to "protect the Native American victim and to foster confidence in the tribe's Social and Health Services." The *James* Court held that the protection of tribal sovereignty justified the withholding of tribal documents even though they might be relevant to a federal criminal prosecution. *James,* 980 F.2d at 1319-1320. In the present case, the Tribe asserted sovereign immunity to protect its right to self-government. The enforcement of tribal policies regarding employee records is an act of self-government because it concerns the disclosure of tribal property and because it affects the Tribe's main source of income. The Tribe, like California or the federal government, has adopted certain polices and procedures regarding its records. These policies promote tribal interests, such as accuracy in tribal records, confidentiality of members' personal information and a trusting relationship with tribal members. The Tribe's employment policies also affect the Casino, the Tribe's predominant source of economic development revenue.

These interests should be weighed against Defendants' interest in investigating potential welfare fraud--something that could be accomplished through far less intrusive means than infringing on the Tribe's sovereignty. *See infra* Section II C. It is clear that the interests at stake for the Bishop Paiute Tribe are equally as great as those at stake for the Quinault Tribe in *James.* Moreover, we find that the state's interest in the present case--the prevention of welfare fraud--is not as great as the federal government's interest in the judicious criminal prosecution in *James,* and it is certainly not as great as protecting the Tribe's sovereign immunity. Thus,

this court reaffirms *James* and holds that the Tribe is possessed of sovereign immunity which bars execution of the warrant.[3]

C. *The County and Its Officials Have Other Less Intrusive Means to Investigate Allegations of Welfare Fraud by Tribal Members.*

Although Defendants may need to expeditiously enforce California's welfare laws, their interests must yield to the principles of immunity. *See United States v. United States Fidelity & Guarantee Co.*, 309 U.S. 506, 513, 60 S.Ct. 653, 84 L.Ed. 894 (1940). Defendants assert that a decision by this court to bar the enforcement of search warrants against tribal governments would hamper state and federal governments in their investigations of criminal conduct on Indian land. The Supreme Court has concluded that even though tribal sovereignty might prohibit the states from conducting law enforcement through the most effective means, other adequate alternatives exist. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 514 (1991) (noting that "[t]here is no doubt that

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[3] Following principles of comity and this Circuit's jurisprudence, comparison to cases denying enforcement of state court subpoenas against the United States government is also appropriate. *See Quechan Tribe of Indians*, 595 F.2d at 1155 (noting that the "sovereign immunity of Indian tribes is similar to the sovereign immunity of the United States"). In *Elko County Grand Jury v. Siminoe*, 109 F.3d 554, 556 (9th Cir.1997), the Ninth Circuit denied the enforcement of a subpoena against a Forest Service employee, holding that principles of sovereign immunity bar a state court from enforcing a subpoena against the United States.

sovereign immunity bars the State from pursuing the most efficient remedy, but we are not persuaded that it lacks any adequate alternatives"). Thus, the fact that the County has the burden of seeking other methods to obtain the same information does not justify a diminution of the Tribe's sovereign status.

[13] The Tribe offered several alternatives to the execution of a search warrant in order to assist the District Attorney in his investigation. Most clearly, the County could have followed the Tribe's policies as to confidential tribal records and allowed the Tribe to seek consent from the three employees before disclosing their files. The Tribe also offered to accept, as evidence of a release of the records, a redacted copy of the last page of the welfare application that clearly indicates that employment records for individuals seeking public assistance were subject to review by county officials. However, the District Attorney refused this offer. The Tribe also contends that the County already had evidence of the alleged welfare fraud in its possession. Finally, Defendants had authority, under Public Law 280, to execute a search warrant against the individual tribal members. Such a search would likely uncover relevant documents. The District Attorney's interest in receiving this information through the processes of the court is no basis to chip away at the Tribe's sovereign status.

III. THE INDIAN GAMING AND REGULATORY ACT DOES NOT PREEMPT PUBLIC LAW 280 AS TO NON-GAMING CRIMES.

[14] The District Court correctly found that IGRA does not preempt Public Law 280 as to non-gaming crimes. IGRA

grants the United States "exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country...." 18 U.S.C. § 1166(d). *See United States v. E.C. Investments, Inc.*, 77 F.3d 327, 330 (9th Cir.1996). In interpreting the preemptive effect of IGRA, the Ninth Circuit stated that if the federal government's exclusive jurisdiction "is incompatible with any provision of Public Law 280, then the Public Law 280 provision has been impliedly repealed by section 1166(d)." *Sycuan Band of Mission Indians v. Roache,* 54 F.3d 535, 540 (9th Cir. 1995). However, IGRA explicitly concerns gaming operations by Indian tribes. In this case, Defendants were seeking to enforce a warrant as part of an investigation into welfare fraud and not part of allegations of illegal gambling. As the District Court rightly noted, "[b]ecause the investigation and search warrant deal with a state felony rather than whether a casino game is illegal under state law, there is no IGRA preemption."

We affirm the District Court with respect to its rulings that IGRA did not preempt Public Law 280 as to non-gaming crimes.

IV. CALIFORNIA IS NOT REQUIRED TO AFFIRMATIVELY ADOPT PUBLIC LAW 280 IN ORDER TO ASSUME ITS GRANT OF JURISDICTION.

[15] The District Court correctly found that California was not required to enact enabling legislation that assumed jurisdiction before Public Law 280 would become effective in the State. A direct congressional grant of jurisdiction over Indian country does not require any further action to vest the

state with jurisdiction unless state law itself prevents the state from exercising such jurisdiction. *See, e.g., Washington v. Confederated Bands and Tribes of the Yakima Indian Nation,* 439 U.S. 463, 471-72, 99 S.Ct. 740, 58 L.Ed.2d 740 (1979) (explaining that Public Law 280's mandatory criminal jurisdiction "effected an immediate cession of criminal and civil jurisdiction over Indian country" to affected states). Moreover, California law has clearly held that it was "not required that California enact some form of enabling legislation to assume jurisdiction before the terms of [Public Law 280] became effective in this state." *People v. Miranda,* 106 Cal.App.3d 504, 165 Cal.Rptr. 154, 155 (Cal.Ct.App.1980). Other circuits have agreed. The Tenth Circuit found that a direct Congressional grant of jurisdiction over Indian land does not require any further action to vest the state with jurisdiction unless state law itself prevents the state from exercising such jurisdiction. *See United States v. Burch,* 169 F.3d 666, 671 (10th Cir.1999).

We affirm the District Court with respect to its ruling that California was not required to enact enabling legislation before Public Law 280 became effective.

V. PUBLIC LAW 280 DOES NOT VIOLATE THE TENTH AMENDMENT.

[16] The District Court correctly found that Public Law 280 does not violate the Tenth Amendment of the U.S. Constitution. Public Law 280 grants certain states jurisdictional authority to enforce state criminal laws and limited civil laws over individual Indians in Indian country. 18 U.S.C. § 1162(a); 28 U.S.C. § 1360(a). There is no attempt by Congress to mandate state participation in the

enforcement of a federal statutory scheme such as in *Printz v. United States,* 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997), or to require a state legislature to adopt federal regulations such as in *New York v. United States,* 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). By contrast, this federal grant of authority allows states to exert their own criminal and civil laws upon Indians.

We affirm the District Court with respect to its ruling that Congress did not violate the Tenth Amendment in passing Public Law 280.

VI. THE COUNTY OF INYO SHOULD BE HELD LIABLE FOR THE CONDUCT OF THE DISTRICT ATTORNEY AND SHERIFF IN OBTAINING AND EXECUTING THE SEARCH WARRANT AGAINST THE TRIBE.

[17][18][19] Municipalities may be held liable under 42 U.S.C. § 1983 for actions which result in a deprivation of constitutional rights. *Monell v. Dep't of Social Servs.,* 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). A municipality, however, cannot be held liable on a *respondeat superior* theory. *Id.* at 691, 98 S.Ct. 2018. To hold a local government liable for an official's conduct, a plaintiff must establish that the government official "(1) had final policymaking authority 'concerning the action alleged to have caused the particular constitutional or statutory violation at issue' and (2) was the policymaker for the local governing body for the purposes of the particular act." *Weiner v. San Diego County,* 210 F.3d 1025, 1028 (9th Cir.2000) (citing

McMillian v. Monroe County, 520 U.S. 781, 785, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997)).

A. *California Constitutional and Statutory Law and Case Law Favor a Finding that the District Attorney and the Sheriff Acted as County Officers In Obtaining and Executing the Warrant Against the Tribe.*

Whether the Sheriff and District Attorney acted as county officers is governed by the analytical framework set out in *McMillian.* In that case, the Supreme Court held that an Alabama sheriff could not be sued under § 1983 for intimidating witnesses into making false statements and suppressing exculpatory evidence because the sheriff was exercising state authority. In reaching this conclusion, the Supreme Court cautioned against a categorical approach, and instead inquired "whether government officials are final policy makers for the local government in a particular area or on a particular issue." *McMillian,* 520 U.S. at 785, 117 S.Ct. 1734. The *McMillian* Court directed its inquiry on an analysis of state law, closely examining the Alabama Constitution, statutes and case law. *Id.* at 786-87, 117 S.Ct. 1734.

When determining a county's liability under *McMillian,* the Ninth Circuit has engaged in an "independent analysis of California's constitution, statutes and case law." *Streit v. County of Los Angeles,* 236 F.3d 552, 561 (9th Cir.2001). The Ninth Circuit has given appropriate deference to a state's legal characterization of the government entities while at the same time recognizing that "federal law provides the rule of decision in section 1983 actions." *Id.* at 560

(citing *Regents of Univ. of Cal. v. Doe,* 519 U.S. 425, 430 n. 5, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997)).

[20][21] We apply California law and find that the Inyo County District Attorney and Sheriff were acting as county officers. As in *McMillian,* our analysis must begin with the California Constitution. The *McMillian* Court relied heavily on two provisions of the Alabama Constitution. First, and "especially important for our purposes," is the provision in the Alabama Constitution designating a county sheriff as an executive officer. *McMillian,* 520 U.S. at 787, 117 S.Ct. 1734. Under the California Constitution, sheriffs and district attorneys are not designated as members of the executive branch. Instead, sheriffs and district attorneys in California are defined in Article XI of the Constitution, entitled "Local Government." Article XI, section 4 of the California Constitution provides that "County charters shall provide for ... an elected sheriff, an elected district attorney...."

The *McMillian* Court also gave weight to the fact that the Alabama Supreme Court had authority to impeach a county sheriff for neglect of office. *Id.* at 788, 117 S.Ct. 1734. By contrast, the California Constitution does not list sheriffs or district attorneys in Article IV, section 18, which provides for impeachment of a variety of state officers before the Legislature. Instead, sheriffs and district attorneys can be removed from office following the accusation of the county grand jury. Cal. Gov. Code § 3060.

Other provisions under the California Constitution and statutes also weigh in favor of finding the District Attorney and Sheriff to be county officers. California law explicitly states that the district attorney and the sheriff are county

officers. Cal. Gov. Code § 24000(a); § 24000(b). The countyboard of supervisors set the salaries of both the sheriff and district attorney. Cal. Gov. Code § 25300. Sheriffs and district attorneys must be registered to vote in their respective counties. Cal. Gov. Code § 24001. The county has the authority to supervise the sheriff and district attorney's conduct and use of public funds. Cal. Gov. Code § 25303. Finally, sheriffs in California are required to attend upon and obey state courts only within their county. Cal. Gov. Code § 26603.

In reaching its conclusion that the District Attorney and Sheriff acted as state officers, the District Court gave primary importance to the supervisory authority of the State Attorney General granted under the California Constitution[4] and state statutes. *See* Cal. Const. art. V, § 13 (providing that the Attorney General is to have "direct supervision over every district attorney and sheriff ... in all matters pertaining to the duties of their respective offices,...."); Cal. Gov. Code § 12560 (providing that the Attorney General can direct the activities of any sheriff relative to the investigation or detection of crime within the jurisdiction of the sheriff, and

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[4] "This provision was added in 1934, when the voters approved Proposition 4. As then Alameda County District Attorney Earl Warren told the voters, this constitutional amendment was designed to 'address the lack of organization of our law enforcement agencies' by providing coordination and supervision by the Attorney General '[w]ithout curtailing the right of local self government.' " *See Roe v. County of Lake,* 107 F.Supp.2d 1146, 1150 (N. D.Cal.2000) (citing Argument in Favor of Proposition 4 by Earl Warren, District Attorney of Alameda County, 1934 General Election Ballot Pamphlet).

that he may direct the service of subpoenas, warrants of arrest, or other processes of court); Cal. Gov. Code § 12524 (providing that the Attorney General can call into conference the sheriffs and district attorneys for the purpose of discussing the duties of their office, with the view of uniform and adequate enforcement of state law); Cal. Gov. Code §§ 12550, 12560 (providing that the Attorney General has direct supervision over the sheriffs and district attorneys and may require of them written reports concerning investigations, detection and punishment of crimes in their respective jurisdictions).

However, "supervision by the Attorney General does not alter the status of sheriffs [and district attorneys] as elected county officials." *Brewster v. County of Shasta,* 112 F.Supp.2d 1185, 1190 (E.D.Cal.2000); *See also People v. Brophy,* 120 P.2d 946, 953 (Cal.Dist.Ct.App.1942) (Noting that constitutional oversight does not "contemplate absolute control and direction of such officials.... Especially is this true as to sheriffs and district attorneys...."). Moreover, to allow the Attorney General's supervisory role to be dispositive on the issue of whether a law enforcement officer acts as a state official would prove too much. The California Constitution grants the Attorney General supervisory authority over all "other law enforcement officers as may be designated by law." Cal. Const. art. V, § 13. Under this provision, if taken to its logical extreme, *all* local law enforcement agencies in California would be immune from prosecution for civil rights violation, thereby rendering meaningless the decision in *Monell,* which preserves § 1983 actions against local governments.

The District Court also accorded significance to the fact that the search warrant was obtained to prevent welfare fraud under the state welfare laws. However, the District Attorney and Sheriff were acting on behalf of the County's Department of Health and Human Services, the governmental entity responsible for the administration of the state's welfare laws, including the investigation of overpayments. *See* Cal. Welf. & Inst. Code § 10800 (providing that the administration of public social services is "declared to be a county function and responsibility and therefore rests upon the boards of supervisors in the respective counties ..."). Thus, the fact that state welfare law was at issue does not support a finding that the District Attorney and Sheriff were acting as state officers in their investigation into alleged welfare fraud.

Case law also compels our finding that the District Attorney and Sheriff acted as county officers in obtaining and executing a search warrant against the Tribe.

1. The District Attorney Acted as a County Officer When He Obtained and Executed a Search Warrant Against the Tribe.

In concluding that the District Attorney acted as a state officer, the District Court relied on the California Supreme Court's decision in *Pitts v. County of Kern,* 17 Cal.4th 340, 70 Cal.Rptr.2d 823, 949 P.2d 920 (1998). In *Pitts,* plaintiffs brought a § 1983 action against the district attorney and county alleging civil rights violations based on misconduct during criminal prosecution. In a thoughtful opinion, the California Supreme Court held that "when preparing to prosecute and when prosecuting criminal violations of state law, a district attorney represents the state ...." *Id.* at 934.

The California Supreme Court, however, recognized the dual roles that a county district attorney performs:

> He is at once the law officer of the county and the public prosecutor. While in the former capacity he represents the county and is largely subordinate to, and under the control of, the [county] board of supervisors, he is not so in the latter. In the prosecution of criminal cases he acts by the authority and in the name of the people of the state.

Id. at 932-33 (citing, *Modoc County v. Spencer,* 103 Cal. 498, 37 P. 483, 484 (Cal.1894)). Using this framework, the California Supreme Court concluded that when a district attorney engages in prosecutorial conduct, he is a state officer, but at other times, he should be characterized as a county officer. *Pitts,* 70 Cal.Rptr.2d 823, 949 P.2d at 934.

Whether a district attorney engages in prosecutorial conduct when obtaining and executing a search warrant has not been addressed by this Circuit in the context of whether a district attorney is a state or county officer. However, the Ninth Circuit has addressed whether this constitutes prosecutorial conduct as opposed to investigatory conduct in the context of a prosecutor's absolute versus qualified immunity. By analogy, these cases inform our decision. In *Fletcher v. Kalina,* 93 F.3d 653, 655 (9th Cir.1996), the court held that a prosecutor was not entitled to absolute immunity for conduct in preparing a declaration in support of an arrest warrant. In reaching this conclusion, the *Fletcher* court relied on the Supreme Court's decision in *Buckley v. Fitzsimmons,* 509 U.S. 259, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993). The

Supreme Court held in *Buckley* that a prosecutor was not absolutely immune when he allegedly fabricated evidence during the investigation by retaining a dubious expert witness. *Id.* at 273-75, 113 S.Ct. 2606. The Court reasoned that "[t]here is a difference between the advocate's role in evaluating evidence and interviewing witnesses as he prepares for trial, ... and the detective's role in searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested...." *Id.* at 273, 113 S.Ct. 2606 (citations omitted). Because the prosecutor's conduct in *Buckley* fell within the latter category, the Supreme Court denied absolute immunity. *See also Malley v. Briggs,* 475 U.S. 335, 342-43, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986) (holding that a police officer who secures an arrest warrant without probable cause cannot assert an absolute immunity defense).

In the present case, the District Attorney was not "*preparing to prosecute [or] prosecuting criminal violations,*" as was the situation in *Pitts. Pitts,* 70 Cal.Rptr.2d 823, 949 P.2d at 934 (emphasis supplied). Instead, the District Attorney was *investigating allegations* of welfare fraud, conduct more similar to that in *Fletcher.* At the time the District Attorney obtained the search warrant, no criminal complaint had been filed against the three tribal member Casino employees whose records were sought--the District Attorney was merely performing his role as "detective." This distinction was recognized and adopted by the District Court when it refused to grant the District Attorney absolute immunity, on the ground that he was engaging in investigatory conduct and not prosecutorial conduct. Finally, the California Penal Code identifies the commencement of prosecution for an offense in only four instances: (a) an

indictment or information is filed; (b) a complaint is filed charging a misdemeanor or infraction; (c) a case is certified to the superior court; or (d) an arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint. Cal. Penal Code § 804. Because the District Attorney had taken none of these actions when he executed the search warrant, we find that the District Attorney was engaging in investigatory conduct more akin to that of a detective.

Relying on *Fletcher* and *Buckley,* and recognizing the significant factual distinctions between this case and *Pitts,* we find that the District Attorney was engaging in investigatory, and not prosecutorial, acts when he obtained and executed a search warrant over the Tribe. This conclusion compels our finding that the District Attorney acted as a county officer when obtaining and executing a search warrant against the Tribe.

2. The Sheriff Acted as a County Officer When He Executed a Search Warrant Against the Tribe.

With respect to the Sheriff's conduct, the District Court recognized that the California courts of appeal and federal district courts in this Circuit have reached different conclusions on whether a sheriff is a state or county officer. The majority of the cases cited by the District Court discuss the sheriffs' role in their function as jail administrators. However, since the District Court's ruling, the Ninth Circuit held that California sheriffs, functioning as jail administrators, are county officials. *See Streit,* 236 F.3d at 565. So holding,

the court relied heavily on the constitutionally and statutorily defined role of California sheriffs discussed above. *Streit,* 236 F.3d at 561-562; *see supra* pp. 562-64.

In support of our conclusion, we also rely on several recent federal district court decisions that hold that the sheriff is properly viewed as a county officer when he investigates alleged criminal conduct. *See Ford v. County of Marin,* 2001 WL 868877 at *8 (N.D.Cal. July 19, 2001) (denying defendants' motion to dismiss on the grounds that the sheriff, when knowingly giving false information to the Housing Authority with the intent of initiating a nuisance lawsuit, did not act as a state officer); *Brewster,* 112 F.Supp.2d at 1191 (holding that the sheriff, when investigating crimes, acts as a county officer).

Finally, we note persuasive language from the California Supreme Court on how the state's highest court views the role of county sheriffs. *Dibb v. County of San Diego,* 884 P.2d 1003 (Cal.1994). In a case concerning a county's authority to create a citizen board to oversee the Sheriff's Department, the court noted that "the operations of the sheriff's ... departments and the conduct of employees of th[at] department[] are a legitimate concern of the [county] board of supervisors." *Id.* at 1008.

Based on the foregoing, we conclude that the Sheriff acted as a county officer when obtaining and executing a search warrant against the Tribe.

B. *The District Attorney and Sheriff Have Final Decision Making Authority to Obtain and Execute a Search Warrant.*

There is no dispute that the District Attorney or Sheriff have final decision making authority to obtain and execute search warrants for the County of Inyo.

VII. THE DISTRICT ATTORNEY AND THE SHERIFF ARE NOT ENTITLED TO QUALIFIED IMMUNITY.

[22] The Tribe further asserts claims against the District Attorney and the Sheriff in their individual capacities. The Eleventh Amendment does not bar § 1983 claims against county officers sued in their individual capacities. *Hafer v. Melo,* 502 U.S. 21, 25-27, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991); *Demery v. Kupperman,* 735 F.2d 1139, 1146 n. 3 (9th Cir.1984).

[23] The District Court correctly held that neither the District Attorney nor the Sheriff is entitled to absolute immunity. However, the District Court erroneously concluded that the District Attorney and Sheriff were entitled to qualified immunity.

[24][25] Qualified immunity "shield[s] [government agents] from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Behrens v. Pelletier,* 516 U.S. 299, 305, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Our analysis of whether the defendants are entitled to qualified immunity

follows a two-part test: (1) whether the facts taken in the light most favorable to the plaintiff would establish a violation of the Fourth Amendment; and, if so (2) whether the law was clearly established at the time such that a reasonable officer faced with the same circumstances would have known that the challenged conduct was unlawful. See *Robinson v. Solano County,* 278 F.3d 1007, 1013 (9th Cir.2002) (en banc) (citing *Saucier v. Katz,* 533 U.S. 194, 121 S.Ct. 2151, 2156, 150 L.Ed.2d 272 (2001)). We conclude, taking the facts in the light most favorable to the Tribe, that the search violated the Fourth Amendment, and that the law in this Circuit was clearly established at the time the search was executed such that it would have been clear to the District Attorney and Sheriff that their conduct was unlawful.

The Tribe has alleged a violation of the Fourth Amendment based on the District Attorney's and Sheriff's execution of a search warrant to seize tribal property (employee records) on tribal land. The Tribe contends that the search was unlawful because it was executed beyond the District Attorney's and Sheriff's jurisdiction. James is the leading case in our Circuit involving seizure of tribal property. 980 F.2d at 1319. In James, we held that a U.S. district court did not err when it quashed a subpoena ordering a tribe to release its documents because the tribe possessed tribal immunity. *Id.* Our holding in James was based on the conclusion that "Congress did not address implicitly, much less explicitly, the amenability of the tribes to the processes of the [federal] court...." *Id.* Accordingly, we found no "jurisdictional grant" from Congress which would require the

tribe to produce documents in a criminal prosecution against an individual Indian.[5]

[26] In James, we did not need to reach the issue whether the subpoena was lawful because it was never executed. Instead, we affirmed the district court's decision not to enforce the subpoena on the ground that the officers had no jurisdictional authority over the tribe. *James,* 980 F.2d at 1319. In the present case, the search warrant was executed but, as in James, the officers still had no jurisdictional authority to do so. Thus, based on the principles set forth in James, we conclude that the search warrant was in violation of the Fourth Amendment because the officers acted beyond their authority when they executed the search warrant against the Tribe and in excess of their jurisdiction.

Whether the execution of a search warrant against tribal property is constitutional was addressed in *Sycuan Band of Mission Indians v. Roache,* 788 F.Supp. 1498, 1508 (S.D.Cal.1992), aff'd. on other grounds, 54 F.3d 535, 543-44 (9th Cir.1995). In Sycuan Band, the San Diego County Sheriff's deputies executed a search warrant on the Sycuan, Barona, and Viejas Reservations and seized gaming devices, cash, and records owned by the tribes. *Sycuan Band,* 788

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[5] In *James,* the federal officers had authority to prosecute an individual Indian for violations of federal criminal laws under 18 U.S.C. § 1153. In the instant case, the county officers had authority to prosecute the individual Indians for violation of state welfare laws under Public Law 280. Under neither of these statutes did prosecutorial jurisdiction extend to tribes as sovereign entities. See Sect. B.II.

F.Supp. at 1501.[6] The district court held that the search warrants were invalid because the state did not have jurisdiction over the tribes and "the defendants, therefore, acted beyond their authority by executing the ... search warrants." *Id.* at 1508. In reaching its conclusion, the district court affirmed the general principle that "a judicial officer's writ cannot run outside the officer's jurisdiction." *Id.* (citing *United States v. Strother,* 578 F.2d 397, 399 (D.C.Cir.1978)).

Our conclusion that the county officers' conduct was in violation of the Fourth Amendment is buttressed by a closely analogous case from the Tenth Circuit. In *United States v. Baker,* 894 F.2d 1144 (10th Cir.1990), a county sheriff executed a search warrant on tribal property. The court held that because it was undisputed that the property was on tribal land and the state had never obtained jurisdiction over such lands, the search warrant was in violation of the Fourth Amendment. *Id.* at 1147.

In light of James and Sycuan Band, and the Tenth Circuit's conclusion in Baker, we hold that the District Attorney and Sheriff violated the Fourth Amendment when they executed the search warrant to seize tribal property held on tribal land because both the Tribe's property and land were

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[6] As in the present case, the search warrant was executed against the tribes in order to obtain information as part of a criminal investigation against individual Indians. n Sycuan Band and the present case, the officers had authority to enforce criminal law against individual Indians under Public Law 280, but did not have authority to enforce those criminal laws against tribes as sovereign entities.

outside the District Attorney's and Sheriff's jurisdiction. We further hold that this Fourth Amendment violation may merit relief under § 1983.[7]

Having concluded that the Tribe has alleged a violation of the Fourth Amendment, we turn to consider whether it would have been clear to the District Attorney and Sheriff at the time the warrant was executed that their conduct was unlawful. The conduct occurred in 2000, and so the law at that time must be our guide. *Robinson,* 278 F.3d at 1015.

[27] As the foregoing discussion reflects, at the time the District Attorney and Sheriff obtained and executed a warrant, the law was clear in this Circuit that there was no jurisdictional grant authorizing county officers to search and seize tribal property as part of a criminal prosecution of an individual Indian. See *James,* 980 F.2d at 1319. Indeed, the only court in this Circuit to address the precise question whether the execution of a search warrant against tribal property is constitutional held that it was not. See *Sycuan Band,* 788 F.Supp. at 1508. Moreover, the only circuit to address this issue concluded--seemingly without debate--that

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[7] Our conclusion that the Tribe may bring a 42 U.S.C. § 1983 action against the District Attorney and the Sheriff based on a search warrant executed in excess of the county officers' jurisdiction, is not precluded by *Hoopa Valley Tribe v. Nevins,* 881 F.2d 657 (9th Cir.1989). Hoopa Valley held that the right to tribal self-government is not a protected interest under § 1983. The present case involves protection from an unlawful search and seizure. Here, the county officers had no jurisdiction to execute the search warrant and seize tribal property and, therefore, the search warrant violated the Fourth Amendment.

such a warrant would violate the Fourth Amendment. See *Baker,* 894 F.2d 1144. Accordingly, we find that no reasonable officer could have concluded that he had jurisdiction to search and seize tribal property as part of a criminal prosecution of an individual Indian, and no reasonable officer could have concluded that the lack of jurisdiction was a mere technicality.

We hold as a matter of law that a reasonable county officer would have known, at the time the warrant was executed against the Tribe, that seizing tribal property held on tribal land violated the Fourth Amendment because the property and land were outside the officer's jurisdiction. Thus, the District Attorney and Sheriff are not entitled to qualified immunity.

AFFIRMED in part, REVERSED in part, and REMANDED.

291 F.3d 549, 2 Cal. Daily Op. Serv. 4329

SUPREME COURT OF THE UNITED STATES

02-281

[Filed December 2, 2002]

INYO COUNTY, A PUBLIC ENTITY, PHIL McDOWELL, INDIVIDUALLY AND AS DISTRICT ATTORNEY, DAN LUCAS, INDIVIDUALLY AND AS SHERIFF	)
v.	)
PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY, ET AL.	)

Bishop Paiute Tribe v. County of Inyo, 275 F.3d 893, 2002 U.S. App. LEXIS 69 (9th Cir. Cal. 2002)

JUDGES:
Rehnquist, Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, Breyer.

OPINION

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit granted.